

MEDICAL LAW
FOR
MEDICAL MEN

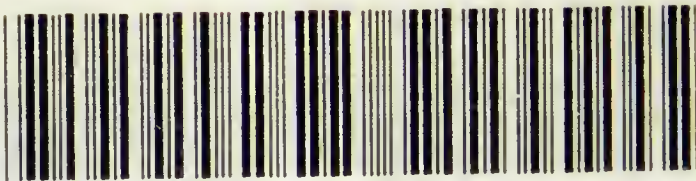
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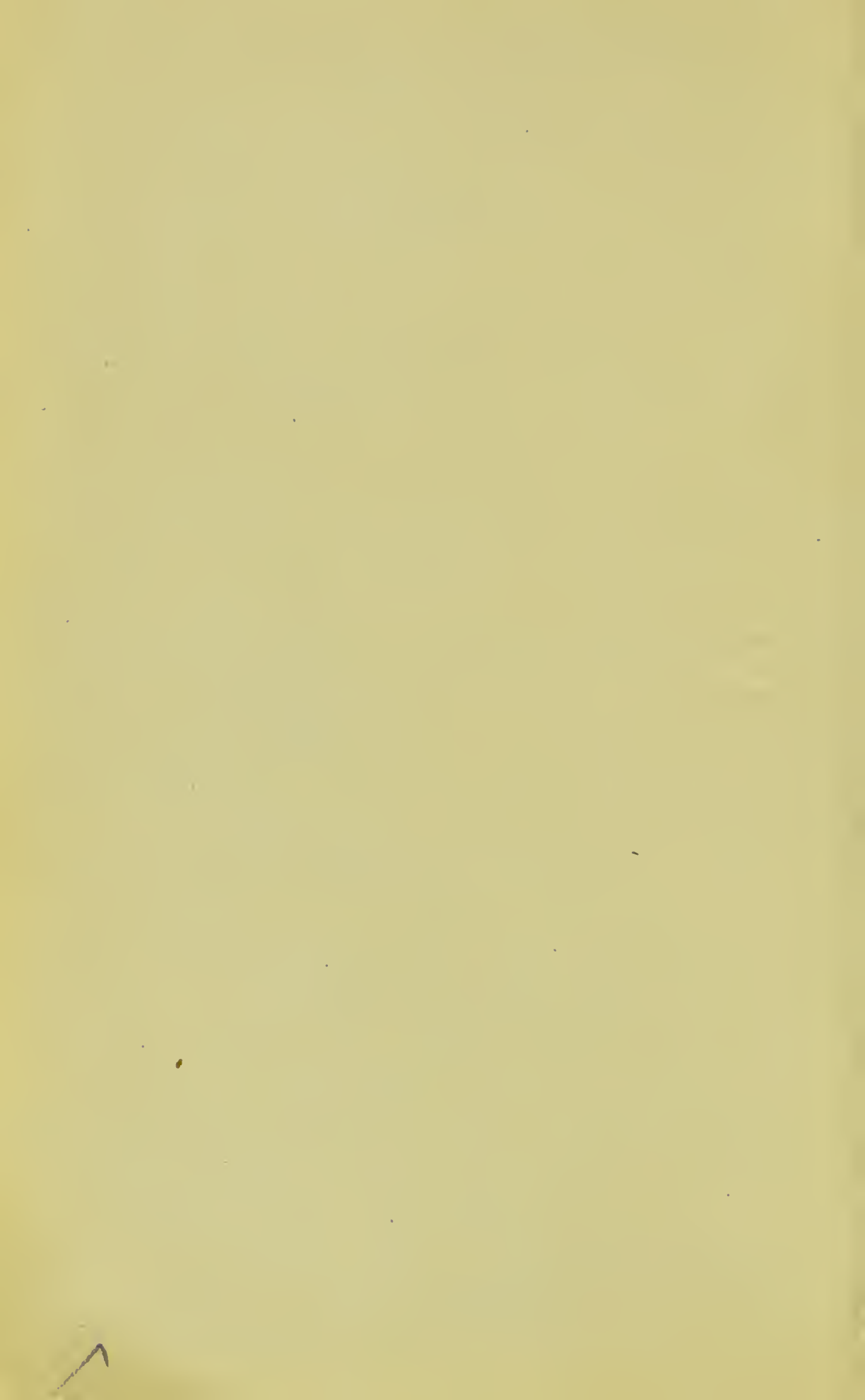


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MEDICAL LAW

FOR

MEDICAL MEN:

*THEIR LEGAL RELATIONS SHORTLY AND
POPULARLY EXPLAINED,*

WITH CHAPTERS CONCERNING

DENTISTS, CHEMISTS, AND MIDWIVES.

BY

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P R E F A C E .



THIS small handbook professes to be what its title indicates, and nothing more. It does not claim to be a treatise on medical law for lawyers, for if it had been intended for their use, cases and authorities must have been quoted, which would be out of place in this manual.

The authors have considered the subject of medical law under three primary divisions, Part I. being devoted to qualified practitioners, Part II. to dentists, chemists, and midwives, and Part III. to unregistered persons.

Part I., dealing with the law relating to qualified practitioners, is necessarily the most important division of their subject. With a view to methodical arrangement, this part has been further subdivided into : (1) The relations of medical men to the various societies of which they may be members ; (2) their relationship to public authorities generally ; and (3) their private relationship to patients and fellow-practitioners.

Part II. has, after consideration, been added, as likely to prove of use not only to the persons of whom it professes to treat, but also to medical men themselves in more completely defining their rights and privileges.

The authors are fully alive to the difficulties of attaining perfect consistency in adopting such a division of their subject, but they hope that by the care they have bestowed upon the smallest details they may have rendered the book easy of reference. To this end they have also adopted the black-type headings throughout, as well as given an analytical index.

The law relating to the subject is, of course, not stationary. Even while these sheets have been passing through the press, a Bill is waiting for discussion in the House of Commons dealing with the registration of midwives. But it is hoped to obviate anachronisms by future editions as occasion may arise.

In the meantime the authors confidently believe that they have included in this manual all points of present importance and interest relating to the subject,

THE AUTHORS.

May, 1890.

MEDICAL LAW FOR MEDICAL MEN.

PART I. QUALIFIED PRACTITIONERS.

CHAPTER I.

THEIR RELATIONS TO MEDICAL BODIES.

Definitions. — The following terms, constantly recurring, have in these pages the meanings respectively set against them :

1. **Physician.** A person¹ entitled by qualification from a College of Physicians to give directions for the treatment of, to treat, prescribe, compound and supply² medicines for any and all forms of disease.

2. **Surgeon.** A person entitled by qualification from a College of Surgeons, or other prescribed authority,³ to treat surgical cases—*i.e.*, cases requiring manual as distinguished from medicinal treatment.

¹ See p. 14 (note 3) as to females qualifying.

² But see below, p. 74, as to colleges forbidding their members, etc., to compound and supply.

³ See note 5 on p. 16.

3. **Apothecary.** A person entitled by qualification to prescribe, prepare, compound and supply medicines for such diseases as are unattended by an external sore or necessity of manual operation.¹

4. **Medical Graduate.** A person who has taken any one or more of the degrees or diplomas specified under heads 10, 11, and 12, pp. 16 and 17.

5. **Registered (or Qualified) Medical Practitioner [Medical Man].** A person registered as such under the Medical Acts, in manner hereinafter mentioned, including certain colonial and foreign practitioners, as mentioned in part i., chap. ii.

6. **General Council.** The General Council of Medical Education and Registration, the constitution of which is explained below.

7. **Register.** The General Register controlled and compiled by the General Council, containing the names and qualifications of Qualified Medical Practitioners (and dentists).²

8. **The Registrar.** The principal registrar, an officer of the General Council, whose duty, *inter alia*, it is to prepare a corrected annual register, and to publish the same.

9. **Branch Registrar.** Registrar or officer of a branch of the General Council (hereafter explained), whose duty, *inter alia*, it is upon proper evidence to register the names of qualified medical practitioners (or dentists) for the district.

10. **England** includes Wales and the Isles of Wight

¹ See note 3, p. 16.

² See part ii., chap. i., p. 104.

and Man ; **Scotland** includes the neighbouring islands ; **Great Britain** implies England and Scotland.

The General Council

of Medical Education and Registration of Great Britain and Ireland is the perpetual corporation established and constituted by the Medical Act, 1858, and amending Acts, the chief of which is the Medical Act, 1886. It consists of a president, elected by the General Council from their number ; five members nominated by the Crown, with the advice of the Privy Council (three for England and one each for Scotland and Ireland) ; five¹ direct representatives, elected 'directly' by the registered medical practitioners of Great Britain and Ireland (that is, three for England and one each for Scotland and Ireland) ; and one delegate from each of the following twenty¹ colleges and societies :

ENGLAND.

Royal College of Physicians, London.

Royal College of Surgeons, England.

Society of Art and Mystery of Apothecaries of the City of London.

University of Oxford.

¹ This number is not inalterable, as the Privy Council has power, on the recommendation of the 'General Council,' for good cause to create fresh electorate bodies, to increase the number of representatives 'directly' elected, or to reduce the existing number by amalgamating two or more electorate bodies, and giving them one vote, or entirely withdrawing the vote from a body. Good cause would be the increase or decrease in importance of the body or bodies thus dealt with.

University of Cambridge.

University of London.

University of Durham.

Victoria University, Manchester.

SCOTLAND.

Royal College of Physicians, Edinburgh.

Royal College of Surgeons, Edinburgh.

Faculty of Physicians and Surgeons, Glasgow.

University of Edinburgh.

University of Aberdeen.

University of Glasgow.

University of St. Andrews.

IRELAND.

King's and Queen's College of Physicians.

Royal College of Surgeons, Ireland.

Apothecaries' Hall.

University of Dublin.

Royal University (formerly known as Queen's University).

The electorate varies in each college, university or society, according to its constitution by Act of Parliament, charter or otherwise. The electors of the direct representatives have simply to be medical practitioners, registered as resident in that part of the United Kingdom in which they claim to vote. The voting-papers are to be sent to them by the 'Branch Registrars,' and may, if not sent, be demanded as a right. If upon demand the paper is not sent, or if, though sent and returned in due order

to the 'Branch Registrar,' the vote is not recorded, although the person for whom the practitioner voted was elected, or if not elected, received a hopeless minority, the voter may, it is submitted, have a right of action against the 'Branch Registrar,' or other the person who may have maliciously¹ obstructed his vote, and recover exemplary damages, as in the case of a Parliamentary voter similarly obstructed.

The president of the 'General Council' is the returning-officer, and the date of election is to be advertised in two or more papers circulating in the part of the United Kingdom where the election is to take place. The last day for sending in nomination papers is indicated in the notice.

A candidate must be nominated in writing by twelve electors at least, and the nomination paper forwarded to the 'Branch Registrar,' who will supply the prescribed forms on application.

All members must be qualified medical practitioners (definition 6), and are elected for five years, and may offer themselves for re-election. The present president and the other members are shown in Appendix, Table A.

Powers and Duties of the 'General Council.'

Its chief powers and duties are (*a*) to regulate the registration of qualified medical practitioners *and dentists*. (*b*) To pay members for attendances and travelling expenses at Council meetings. (*c*) To supervise examining bodies by making recommenda-

¹ See p. 21.

tions to the Privy Council, thereby preventing defective standards of examination and the imposition of any special theories on candidates. (d) To compile and publish the British Pharmacopœia.¹

Branch Councils.

The members severally elected or nominated for England, Scotland and Ireland form 'Branch Councils,' to whom the 'General Council' may delegate all its powers, *except* those involving recommendations to the Privy Council, and the compilation of the British Pharmacopœia. The president of the 'General Council' is *ex-officio* a member of each 'Branch Council,' and each 'Branch Council' appoints a 'Branch Registrar,' whose duties involve the practical work of registering the names, addresses and qualifications of all and any persons entitled to be registered, upon their affording sufficient evidence² of their right; also of placing fresh titles or degrees upon the 'Register' in addition to those already appearing, altering addresses, sending voting-papers, etc.

Persons entitled to be registered under the Medical Acts.

The following persons³ are, unless there be sufficient cause to the contrary,⁴ entitled to be registered by the

¹ The copyright is solely vested in the 'General Council.'

² For method of registration, see below, p. 17.

³ There is now no legal reason why females *may* not be registered, but colleges are not bound to examine them, nor may they, when qualified, hold positions upon councils. Otherwise their legal rights and obligations are similar to those of men.

⁴ If the applicant would be liable to be struck off if he were

several 'branch registrars,' as the case may be, and to practise under the name or style of their several registered qualifications throughout the British dominions¹ as

Qualified Medical Practitioners.²

1. Fellow, member, licentiate, or extra-licentiate³ of the Royal College of Physicians, London.

2. Fellow, member, or licentiate⁴ of the Royal College of Physicians, Edinburgh.

3. Fellow, member, or licentiate of the King's and Queen's College of Physicians, Ireland.

4. Fellow or member, or a licentiate in midwifery⁵ of the Royal College of Surgeons, England.

5. Fellow or licentiate³ of the Royal College of Surgeons, Edinburgh.

registered (for cases of which see pp. 18 and 19), he cannot claim to be registered.

¹ Medical practitioners registered for the first time since 30th June, 1887, can only practise outside the United Kingdom subject to the local laws of the colony or possession where they desire to practise.

² No person in the following list can be now (since 30th June, 1887) registered for the first time who has not got a certificate showing his qualifications by examination in medicine, surgery and midwifery.

³ This title is no longer conferred.

⁴ A licentiate cannot compel the College to examine him for the fellowship.

⁵ A surgeon registered before 30th June, 1887, may be registered with qualification in midwifery if first practising as a surgeon before 1858, on production of his diploma; but if first practising after that date, he must also produce a certificate of attendance at twenty labours. Registration, since 30th June, 1887, necessitates qualification in midwifery as a condition precedent, and see further, part ii., chap. iii.

6. Fellow or licentiate¹ of the Faculty of Physicians and Surgeons of Glasgow.

7. Fellow or licentiate of the Royal College of Surgeons, Ireland.²

8. Licentiate³ of the Society of Apothecaries, London.

9. Licentiate of Apothecaries' Hall, Dublin.⁴

10. Doctor, bachelor, or a licentiate of medicine, or master, licentiate, or bachelor of surgery, or master of obstetrics of any University of the United Kingdom,⁵ legally authorized to grant such diplomas respectively.⁶

11. Doctor of Medicine by grant of Archbishop of Canterbury before 31st July, 1858 [Lambeth degree].

¹ This title is no longer conferred.

² The College has since 1784 had power to grant licenses in midwifery to its own licentiates in surgery, and since 1885 to all *registered practitioners*. This, therefore, would not, like the license of the English College, have entitled to original registration, but would be an additional title. See below, p. 17.

³ A member of the Society of Apothecaries, though not capable of registering as a qualified medical practitioner, might before 30th June, 1887, if duly certificated as an apothecary by one of the societies (English or Irish), properly practise and recover his charges.

⁴ A L.A.H. Dublin may be registered as, and have all the rights of, a Pharmaceutical Chemist of Ireland. See part ii., chap. ii.

⁵ A doctor or bachelor of medicine, registered for the first time since 30th June, 1887, may now not only prescribe, but, like a physician, compound or supply medicines, and *ex hypothesi* treat a surgical case and practise midwifery. If registered for first time before the Act, he could not supply medicines nor treat surgical cases, nor practise midwifery except as subservient to a medical case. A bachelor or master of surgery has, and had, full powers of practising as a 'surgeon.'

⁶ The degrees of M.D. and M.B. of the University and King's College, Aberdeen, and the Marischal College and University of Aberdeen, and M.D. and M.S. of Queen's University, Ireland, are no longer granted.

12. Doctor of Medicine of any foreign¹ or colonial University or College practising as Physician in the United Kingdom before 1st October, 1858, under diploma authenticated to the satisfaction² of the 'General Council.'

Mode of Registration.

The 'General Council' distributes to examining bodies forms to be filled up by successful candidates. This form is shown in the Appendix, Table 'E,' and should be at once filled up and forwarded to the 'Branch Registrar' with the prescribed fee. See Appendix, Table 'A,' for the name and address of the 'Branch Registrar.' If the examining authority have forwarded a return of the successful candidates to the 'Branch Registrar,' and the particulars furnished by the applicant in the form correspond with those in the return, the applicant will be registered without further trouble; otherwise he may have to send his diploma to the 'Branch Registrar,' or furnish further particulars.

In the case of persons requiring to be registered *for the first time* in respect of a qualification obtained before 1st July, 1859, the fee is £2. But if the qualification be obtained since that date, the fee is £5.

The fee for registration of foreign titles (see Appendix, Table 'C') is £2 per qualification.

¹ For the graduates of foreign and colonial universities or colleges not within this definition, who may be registered as such, see part i., chap. ii.

² No rule was adopted. Each case was considered on its own merits.

Each additional title or qualification may be inserted upon the register upon payment of 5s.,¹ including the newly-created title conferred for proficiency in sanitary science.²

For these fill up Form 'F' in Appendix, and forward the diploma.

Certain approved foreign and colonial degrees may also be added *in addition* to home qualifications. A list of these, approved by the 'General Council,' is found in Appendix, Table 'C.' As to foreign and colonial degrees which may *alone* entitle to registration, see part i., chap. ii. Though, as a rule, any person may have his qualifications in one or more respects severally entered upon the Register or Registers, one registered as a qualified medical practitioner is not entitled to be registered under part ii., chap. ii., which see.

What Persons may be struck off the 'Register.'

A qualified medical practitioner may be struck off the 'Register' by the 'General Council':

(1) If convicted in England or Ireland of felony or misdemeanour, or in Scotland of any crime or offence.³

¹ The application should be made upon Form 'F,' Appendix, and in a similar way to application for original registration.

² For list of these titles see Appendix, Table 'D.'

³ If tried and acquitted, there appears no reason why the 'General Council' should not deal with the case for themselves under the next head; but in practice this is not likely to occur, the 'General Council' accepting the decision of a court of law as final. If convicted abroad, the 'General Council' would have to deal with the matter under the next head.

(2) If found guilty by the 'General Council'¹ of infamous professional conduct, whether committed before or after registration.²

(3) If struck off by the college or body to which such qualified medical practitioner belongs, in respect of such qualification as he obtains from such college or body.³

(4) Persons who fail to answer two prescribed letters at six-monthly intervals addressed to them by the Registrar at their last *registered* place of residence.⁴

(5) Deceased persons. [As to this case, it is the duty of the registrar of deaths to signify the death of a qualified medical practitioner to the 'Branch Registrar.']

(6) Persons whose registration has been obtained fraudulently or incorrectly.

Procedure.

The process (except as to persons struck off under heads 4 and 5 of last article) is usually for one or more

¹ The 'General Council' has absolute discretion, which cannot be called in question if it has been *bonâ-fide* exercised, and publication of its proceedings implicating a medical man is not libellous if fair and made *bonâ fide*.

² It is now declared infamous professional conduct for a qualified medical practitioner to connive with an unqualified person in the way of giving certificates for him, etc.; and see below, p. 37.

³ This is stated here because there has been no decision to the contrary, though in the case of dentists the contrary has been held—*i.e.*, that the Council cannot erase simply because the dentist's diploma has been cancelled.

⁴ It is highly important that all changes of address should be at once notified to the 'branch registrar' originally registering. If a person is struck off for this reason, he may apply to be restored.

registered qualified medical practitioners to memorialize the 'Branch Council' to take official cognizance of the matter. The 'Branch Council' then investigates the facts and reports to the 'General Council,' which issues a summons to the accused to appear before the Council on a day named.

He is entitled to be heard in his defence personally or by solicitor or counsel. If the 'General Council' decide to strike off a practitioner, the 'Registrar' proceeds to erase such person's name from the 'Register,' and issues notices to the 'Branch Registrars' to do the like, and also communicates with the colleges or universities or other bodies of which the accused is a member, and recommends them not to confer upon the accused a new qualification without the consent of the 'General Council.'

The decision of the 'General Council' is final, and, unless fraud is imputed, cannot be appealed against.¹

Compulsory Registration and Restoration of Name to 'Register.'

In the case of a *qualified medical practitioner* who is not disqualified as a person liable to be struck off as above mentioned, yet is refused registration by the 'Branch Registrar,' or has been struck off the 'Register,' such person may enforce registration² by

¹ See above, p. 19, note I.

² Of course he should always first demand restoration in writing, and ask the 'General Council's' reasons for striking him off, and if the erasure has been made under heads 4 or 5, p. 19, he will generally be reinstated without further trouble.

proceedings for mandamus in the High Court of Justice in England, provided that the 'General Council' has not considered his case, or if considered, yet has not *bonâ fide* exercised its discretion when such discretion is exercisable.¹ The proceedings in Scotland and Ireland are similar, but in all cases highly technical. The 'Branch Registrar' should be made defendant to the writ or proceeding.

In no case can the 'General Council' lawfully refuse registration or erase a person from the 'Register' on account of the applicant having embraced or practised a particular theory of medicine, surgery or dentistry.²

Colleges, Universities and Societies.

It is not within the scope of this manual to detail the methods of qualification for membership of any of the above bodies. Information upon this point is readily furnished by the registrars, secretaries, deans or other officials of such bodies. The rights and duties of a member, so far as the body is concerned, are also laid down by the charter or Act of Parliament under which the body is constituted.

One point is sufficiently important for especial mention. In the absence of any express regulations upon the point, if a member qualified to vote in the business of his body be prevented recording his vote, his remedy is by action in damages against the person

¹ Where a foreign or colonial practitioner is refused registration, he may appeal to the Privy Council. See part i., chap. ii.

² But see note I on p. 19 as to their wide discretion in other cases.

or persons refusing the vote, or at whose instigation the vote is not recorded. There must be what is technically called malice in the refusal or instigation ; so that if the person refusing the vote properly exercised *bonâ fide* discretion vested in him or refused the same for reasonable and probable cause, the voter could not recover.

Substantial damages would not be given unless some special damage could be proved, the voter's remedy being, in the authors' opinion, similar to a municipal, not a Parliamentary voter.

CHAPTER II.

COLONIAL AND FOREIGN DIPLOMAS.

By recent legislation it has been possible for persons holding certain diplomas not included in those specified in part i., chap. i., to be registered as duly qualified medical practitioners with all the rights and privileges of such.

A. Colonies.

1. A person having a diploma recognised by the 'General Council' as showing that the holder has sufficient skill in medicine, surgery and midwifery—such diploma having been granted to him in any part of Her Majesty's dominions without the United Kingdom—shall be entitled to registration and to practise as a 'qualified medical practitioner,' according to his qualifications, if the Privy Council shall have declared such part of Her Majesty's dominions to be entitled to such recognition¹ and upon such person—

- (1) Producing the diploma to the 'Registrar';
- (2) Showing that he is of good character;
- (3) Showing that he is entitled to practise medicine,

¹ New Zealand and Ceylon have been thus recognised.

surgery, and midwifery in the colony where the diploma is granted ;

(4) Showing that the diploma was thus granted when he was not domiciled in the United Kingdom, *or* was so granted during a period of five years' residence away from the United Kingdom, *or* that he was practising medicine and surgery in the United Kingdom on a day prefixed by the Privy Council in the above-mentioned order, and had been so practising for ten years before in the United Kingdom or elsewhere ;

And (5) paying the registration fee of £5.

Additional *recognised* colonial and foreign titles may be added upon payment of the usual fee [5s.] per registration. From the refusal of the 'General Council' to register there is an appeal to the Privy Council. The practitioner who is refused registration should require the reasons of the 'General Council' for such refusal to be stated in writing, and beyond the appeal above mentioned he seems to have no remedy to compel registration.

B. Foreign Countries.

2. A person having a **Foreign Diploma** recognised by the 'General Council,' as in the case of a Colonial diploma of a medical practitioner, granted to him by a foreign country which the Privy Council shall have declared by order to be entitled to such recognition, shall be entitled to registration as a 'qualified medical practitioner,' and when registered to practise as such,

according to his qualifications, upon complying with conditions Nos. (1) (2) (3) and (5) pp. 23, 24;

And (4) showing that he is not a British subject, *or* that, although a British subject, he obtained the diploma during five years' continual residence away from the United Kingdom, *or* that, although a British subject, he was practising medicine and surgery in the United Kingdom upon the date fixed by the Privy Council in the above-mentioned order and for ten years before in the United Kingdom or elsewhere.

He has a similar appeal for refusal by the 'General Council' to register as the Colonial practitioner (see above).

CHAPTER III.

MEDICAL MEN AND THEIR PUBLIC RELATIONS.

THERE are certain cases in which the public rights, duties, and relations of medical men differ from those of the general public, others in which common opinion has created distinctions which do not in fact exist, and, again, others in which medical men are, by the nature of their profession, peculiarly concerned to know the law.

I. Privileges.

A 'registered medical practitioner' *alone* can be appointed (according to his qualifications) to the following medical and surgical appointments :

1. In the military or naval services, or to emigrant vessels, or other vessels by law required to carry a surgeon,¹ and registered in the United Kingdom.²

¹ These are vessels proceeding to a foreign port not in Europe or the Mediterranean from the United Kingdom, and either (1) carrying more than fifty passengers, or (2) if sailing boats, carrying more than one passenger to every thirty-three tons burthen, or if steamboats, more than one passenger to every twenty tons burthen. See below, p. 122, as to unqualified practitioners assuming these duties.

² A vessel registered in a British possession may carry a medical officer registered in that possession or in the United Kingdom.

2. In a hospital, infirmary, dispensary, or lying-in hospital, not wholly supported by voluntary contributions, and especially in county infirmaries or hospitals in Ireland.

3. In a lunatic asylum, gaol, penitentiary, house of correction or industry, workhouse, poor-house, or union.

4. In any other public establishment or institution.

5. In a friendly or other society for the purpose of giving mutual relief to the members in sickness, old age, or infirmity.

6. As a medical officer of health.

In respect of these appointments the following notes may be found useful.

Army and Navy Surgeons are appointed by the Secretary for War and First Lord of the Admiralty respectively, and are entitled to certain retiring gratuities or pensions. Information can be obtained from the War Office and Admiralty respectively, as to the necessary qualification and special prescribed course of study and examinations.

Indian Army Surgeons are appointed with somewhat similar qualifications and privileges by the India Office, from the Military Secretary of which office information can be obtained as to qualification, study, etc.

Prison Surgeons are appointed by the Justices of the Peace for the county, and are similarly entitled to pensions. Application for information should be made to the Justices' Clerk.

Convict Prisons abroad. Surgeons for such as are

situated in colonies which are not autonomous are appointed by the Colonial Secretary, Colonial Office, London.

Medical Officer to the Privy Council. As its name implies, this appointment rests with the Privy Council.

Medical Visitor in Lunacy in England. This appointment is in the gift of the English Lord Chancellor.

Medical Inspector of Merchant Ships. This appointment rests with the Local Marine Board of the port at which the Inspector has to act, or, in default, with the Board of Trade, from which Board all information may be obtained.

Medical Inspectors of Seamen are similarly appointed.

Medical Inspector of Passenger Ships. This appointment is in the gift of the Emigration Officer of the port, who will give all information as to duties, qualifications and salary.

Factory Surgeon is appointed by the Inspector of Factories for the district, who will give all information. The candidate must not be pecuniarily interested in any one of the factories he has to inspect. His duties and fees are settled by Act of Parliament. He may take private patients.

Medical Officer of a Parish or Union. This appointment rests with the Poor Law Guardians in England. The candidate must be registered in respect both of medicine and surgery.¹ He may take private patients,

¹ Under special circumstances the Guardians may appoint a candidate who has only one of these qualifications.

and his fees are fixed.¹ In certain cases² he may vaccinate, and obtain public vaccinator's fees. The Clerk of the Guardians will give all information. The medical officer of a parish or union in the County of London receives a portion of his salary from the London County Council at the direction of the Local Government Board.

In case the Guardians fail for twenty-one days to fill up a vacancy, the Local Government Board may appoint. He is removable at the direction of the Local Government Board, and may be required by the Board to assist the Medical Officer of Health (see below) of the district comprised in or coinciding with his own, an extra salary being provided him in such case. Should the Board under their powers issue regulations in the *Gazette* relating to medical inspection of vessels in port for the purpose of preventing epidemics, he has a right to board vessels within the regulations, and to charge the captain, as agent for owners, for any medical attendance.³ If the amount of the officer's claim be under £20, he may recover same by summary proceedings before justices.

Public Vaccinator is appointed as in last case. He must be similarly registered in a double capacity. His duties and minimum fees are fixed by Act of

¹ He holds office *durante bene placito*.

² If, while attending in the ordinary course of his duties upon a patient ill with small-pox, he finds persons in the house who (a) have never been vaccinated nor had small-pox, or (b) who have been vaccinated, but, having reached the proper age for re-vaccination, have not been revaccinated.

³ A private practitioner who attends in default of the medical officer may charge the captain in the same way.

Parliament. He may take private patients. It is usual, however, for him to enter into a formal contract. Application for information as in last case.

Medical Officer of Health.

In England. The Commissioners of Sewers for the City of London, every vestry and district board in the Metropolis, and outside the Metropolis, the rural and urban sanitary authorities under the Public Health Act, 1875, shall appoint one or more legally qualified and registered medical practitioners to act as Medical Officers of Health for their respective districts.

The duties of such officers are to report periodically upon the health of their districts, investigate any nuisance that may be complained of, inquire into the existence of epidemics, and other duties of a like nature which may be required of him or them.

The Medical Officer of Health is appointed at the pleasure of the vestry or board so appointing him. (But see below as to power of Local Government Board to dismiss.) County Councils can now appoint Medical Officers of Health, who must not hold any other appointment, or practise without the Council's express written consent.

The qualifications of all future medical officers must be triple—*i.e.*, in medicine, surgery, and midwifery—unless the Local Government Board shall otherwise in special cases direct. In case of the appointment of a medical officer of a district containing 50,000 or more inhabitants after the 1st of January, 1892, he must have, in addition to such triple qualifications,

either a registered diploma in sanitary science, public health, or State medicine,¹ *or* have been during three preceding consecutive years the health officer of a district containing at least 20,000 inhabitants, *or* have been for a similar period a medical officer or inspector of the Local Government Board.

In cases of future appointments, if a medical officer's qualifications, appointment, salary, and tenure of office are in accordance with the regulations of the Local Government Board, made by order under the Public Health Act, 1875, and the appointment receives the approval of the Board, the County Council comprising the medical officer's district, or a part of it, has to contribute a portion of his salary, and in such cases the portion contributed by the County Council will be forfeited to the Crown if the medical officer fails to make the proper reports and returns to the Board.²

In Scotland the appointment is in the hands of the Town Councils or Police Commissioners, as to burghs and police burghs, and elsewhere the County Councils, the several clerks of whom, as the case may be, will give the necessary information.

In Ireland the appointing bodies are the Corporations of the City of Dublin and other corporate towns, the Lighting, Municipal, or Town Commissioners, as the case may be, and in rural parts the Poor Law Guardians. The clerks to these several bodies can supply all information.

¹ See Appendix D as to bodies granting such diplomas.

² The Board has now similar powers of filling up vacancies and removal as in case of Medical Officers of Parishes (see p. 28).

In England the

Public Analyst

is appointed in the City of London by the Commissioners of Sewers, and in the Metropolis by the various vestries and district boards. The analyst must be a person having competent knowledge, skill, and experience as an analyst of food and drugs. In England either the Court of Quarter Sessions of every county or the Town Council of a borough having a separate Court of Quarter Sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, appoints. If an analyst be not appointed by the authority in whom the appointment rests, the Local Government Board may require such appointment to be made. All appointments and removals of public analysts are subject to the approval of the Local Government Board.

In Scotland the appointment is made by the Commissioners of Supply at their ordinary meetings for counties, or by the Commissioners or Boards of Police, or by the Town Councils for boroughs. Such appointments must receive the approval of one of Her Majesty's principal Secretaries of State for Scotland.

In Ireland the appointment rests with the grand jury of every county and Town Council of every borough, the approval of such appointment by the Local Government Board of Ireland being required.

The salary of the analyst may be by yearly stipend or by fees, or by yearly stipend and fees. He is not prohibited from undertaking private work, unless there be an express contract to the contrary.

Medical Officers for Public Hospitals (*i.e.*, hospitals supported out of the rates) are appointed by the same persons who appoint Medical Officers of Health, except in Ireland, for certain hospitals (*i.e.*, those established under 45 Geo. III., cap. 62, and amending Acts).

Medical Officers of Dispensaries, Ireland, are appointed by the Poor Law Guardians. They are *ex-officio* Medical Officers of Health. The Clerk to the Guardians will supply all information.

A Medical Officer of the Local Government Board is appointed by that Board, which regulates his duties ; his salary is fixed by the Treasury, not exceeding £1,500 per annum.

II. Exemptions.

A registered 'medical practitioner' *in practice* is exempt from the duty of

- (1) Serving upon any jury or inquest.
- (2) Serving any corporate hundred, ward, parochial or township offices.
- (3) Serving in the militia.

He may, of course, serve any of these offices if he so pleases, but in the event of his being summoned on a jury, he should write the sheriff's officer stating the circumstances under which he claims exemption. To prevent a fine or imprisonment for contempt of court, he should note that a mere qualification to be registered as a 'medical man' in any capacity, without actual registration, is insufficient to exempt. (As to proof of registration, see below, p. 93.) If a person be qualified but unregistered, though in actual practice,

he should attend the court to solicit exemption on grounds of public convenience, and the judge, sheriff, or coroner, as the case may be, *may*, in his discretion, release him from attendance.

III. Certificates.

One of the most important public duties of medical men is that of giving certificates of death.

1. As to death *certificates*,¹ a medical man² occupies an extremely delicate position. On the one hand he is compellable, under a penalty of 40s., upon the decease of a person whom he has attended in his or her last illness, to give the person or persons who is or are bound to give the necessary information to the registrar of deaths, a certificate of what he believes to be the cause of death,³ *unless* there is an inquest upon the death. On the other hand, should he have reasonable suspicion that the cause of the death occurred from other than natural causes, he should decline to give a certificate of death, and communicate his suspicions to the coroner's officer for the district.

Should he give a

False Certificate,

or give or withhold information, with the intention of wilfully misleading (out of whatever motive

¹ Forms of certificate may be procured gratis of the registrar of deaths of the district.

² In England and Ireland the certificate *must* be that of a 'qualified medical practitioner,' and in Scotland, though not expressly so enacted, the rule is the same.

³ This is the case in England and Ireland. In Scotland the 'medical man' must give the notice direct to the district registrar within seven days, under a similar penalty.

or sympathy for the relatives of the deceased), the 'medical man' is liable in England or Ireland to a penalty of £10, or imprisonment for any term not exceeding two years, or penal servitude for five to seven years. But the indictment must be laid within three years, and proof (for a conviction) must be given that the information or certificate was not given in ignorance, but wilfully, knowingly, and falsely.

In Scotland the punishment is the same, without the option of a fine.

Absolute rules cannot be laid down as to what amount of personal attention would justify a medical man in giving a death certificate if he were not present at the death in person. It is not an unusual, though a highly dangerous practice, for a practitioner who has attended a moribund person to certify death without having seen the body, upon the representations of the friends of the deceased.

An unqualified assistant may not sign the certificate in the name of his principal, nor can the principal sign the certificate as of personal knowledge when the attendance has been wholly or almost wholly by the assistant, whether qualified or unqualified. Such a certificate would be distinctly 'false.'

Amongst the poorer classes it is not an unusual circumstance for a 'medical man' to be called in simply to certify the cause of death.¹ He is not, under

¹ If a child dies under ten years of age, and has been insured for funeral expenses, and a medical man is called in to certify as to cause of death, he is bound to give a certificate according to the best of his belief, on payment of 1s., and if he has been attending the child he must give the same gratis.

these circumstances, bound to do so, and should institute the fullest examination and investigation before certifying.

Upon the duties of the registrar of deaths it is not the purpose of this manual to treat, yet it is of moment that he is not bound, in order to register the death, to require a certificate from a qualified medical practitioner, but may accept any information he may think satisfactory.

Especial care must be exercised in cases of granting certificates of still-birth which may cloak cases of child-murder, and any evidence of live-birth¹ warrants a refusal of such a certificate. If the medical man wilfully certifies still-birth when the evidences are against it, he is punishable as for giving false certificates of death. (See last page.)

In all cases of giving death-certificates where the conduct of a practitioner amounts to gross professional misconduct² or neglect, he could be struck off the 'Register' by the 'General Council,' in addition to any legal punishment he may receive.

2. A 'medical man' present at a birth is, in default of the parents and guardians, and (in practice) in default of the other occupiers of the house in which the birth takes place, compellable to give notice thereof to the registrar of births for the district within forty-two days of the birth under a penalty.

¹ Live-birth and still-birth are not legally defined, but live-birth may be stated as consisting in the manifestation of some certain sign or signs of life by the child after it is completely born. For further information upon this point see 'Legal Medicine,' vol. i.

² See p. 61, note 2.

In practice this is rarely enforced.

3. A 'medical man' present at a death in England or Wales¹ should, in default of the parents, guardians, or resident relatives of the deceased, or (in practice) the occupiers of the house in which the decease took place, give *notice* of the death to the registrar of deaths for the district within five days of the death under a penalty, *unless* he has given a medical certificate of death to the persons, who are before him compellable to give such notice, when fuller particulars must be furnished by him within fourteen days of the death, unless such person has already done so. And if the registrar of deaths requires further information, he may summon the 'medical man' present at the death to give him full particulars, under a penalty, if the 'medical man' disobey, of 40s.

Certificates of Insanity

are treated below, p. 48.

IV. Criminal Offences.

Though equally punishable with the general public, according to the strict letter of the law, the 'medical man' is often visited with severe punishment, because of (1) his special knowledge, or (2) his relationship to the person injured.

(1) Instances of the former are cases of procuring or attempting to procure abortion, or causing a miscarriage, or concealment of birth.²

¹ The Scotch and Irish law is substantially the same.

² Whether convicted or not, if the offence were proved to the satisfaction of the 'General Council,' the accused could, doubtless, be struck off the 'Register.'

The only excusable case of procuring abortion would appear to be where the operation is made under the *bonâ-fide* belief that it is necessary to save the mother's life, or that of the child. But this case is not expressly excepted by the Act creating the punishment.¹ It would, however, be deemed excusable by the medical body of which the accused was a member.

For similar reasons a 'qualified medical practitioner' would be more heavily punishable than an unqualified person, and one who had some knowledge, or might reasonably be expected to have such, than an ignorant person.

(2) Of the second class of cases are cases of indecent assault or rape of a patient under pretence by the 'medical man' of an application of curative processes, though the patient were a consenting party.²

V. Medical Witnesses.³

Two popular fallacies require especial mention.

'Qualified medical practitioners' frequently believe that they are not bound to disclose in the witness-box confidential statements made to them by their

¹ Notwithstanding the assertions of some writers, a child *en ventre sa mere*, however immature, cannot be legally destroyed to save another (*i.e.*, its mother's) life; but most judges would direct the jury to acquit the prisoner who had acted *bonâ-fide* in such a case.

² For cases where a 'medical man' can be prosecuted for negligence towards his patient, see p. 60.

³ A medical witness must be registered in the capacity in which he is called upon to give evidence. It is open to the judge or coroner to refuse any evidence of unregistered persons called as medical witnesses.

patients. But there is no privilege in the case of the medical profession, and a medical man refusing to disclose such statements, or to produce any documents he may have in his possession relating to the case at issue, may be treated as contumelious, and committed to prison for contempt of court.

Should a medical witness consider that the answer to any question, if published, would be prejudicial to the cause of law and order, or create scandal, or for some other good reason should not be stated in public, it is suggested that he should ask leave to commit his answer to paper for the perusal of the judge, or take the risk of refusing to answer, which might be the more honourable course.

A second fallacy is that a witness must be careful to make no defamatory statements in the witness-box. The contrary is correct, and a witness, under the cover of his oath, may make whatever statements he pleases in the box without fear of an action for libel. It is hardly necessary to add that any falsehoods will be punished as perjury, and any statements made maliciously may be considered worthy of severe censure by the registering body.

Fees.—A medical witness may in civil, *but not criminal*, cases object to give evidence before he is paid his proper fee. But he must take the objection before being sworn. For list of fees see Appendix, Table 'D.'

It should also be noted that, as a witness can only be compelled to give evidence of facts within his knowledge, he can not only refuse to express any opinion,

but, if called as an expert, can refuse in any case to give his evidence without payment of fees.

General rules for a medical witness :

(1) He should never be an advocate, but always impartial. Any suppression of truth, or partisanship, materially detracts from the value of his evidence.

(2) His evidence should be given without any technical terms that can be dispensed with, and in the simplest language.

(3) He should confine himself to stating matters of fact unless asked for an opinion, which, in such case, should be clearly given, with clear intelligible reasons.

(4) He should never argue with advocates. Should his evidence appear contradictory, and the advocate give him no question leading to a satisfactory explanation, he can always ask and obtain the judge's leave to make an explanation to save his own reputation.

(5) Above all things, he should have a clear idea before he goes into the box of what he is going to say. If he has not arranged his own facts and opinions beforehand, how can he expect to do so in the haste and excitement of the court? In this respect a diary is invaluable, and should be kept by every 'medical man,' not verbosely, but tersely and concisely. By the assistance of this as a refresher to his memory in the witness-box he may be saved much confusion.

(6) As a matter of ordinary duty he should have studied some acknowledged text-book on forensic medicine,¹ and have refreshed his memory with the

¹ 'Legal Medicine,' vol. i., by C. Meymott-Tidy, M.B., contains much fuller information upon these points.

chapters dealing with the particular class of cases upon which he has to give evidence.

(7) If he has given evidence before in the case, *e.g.*, at a former hearing or in an inferior court, he should read up his evidence as then given.

VI. Anatomy Schools.

Although the Legislature does not require a founder of, or professor in, an anatomy school to be a 'qualified medical practitioner,' yet in actual practice the necessary license for the founding of a school or teaching dissection of human bodies is not granted except to such a person. The Home Secretary, upon application and reasonable grounds of necessity being shown, will grant a license to such a person for such term and upon such conditions as the Home Secretary may see fit.

The method of procuring the license is highly formal, and the regulations can best be obtained on application to the Home Office. When the school is established it is subject to periodical inspection by official inspectors, and if not regulated satisfactorily the license may be cancelled.

Licensed 'medical men' may only dissect the following bodies :

(1) The body of a person whose executor or other the person having the lawful control of the body, not merely for interment, shall present same for dissection, *unless either*—(a) The deceased shall at any time during his lifetime in writing, or during his last illness verbally before two witnesses, have expressed a con-

trary desire ; *or* (b) The surviving husband or wife, or any known relative of the deceased, shall express a contrary desire.

(2) The body of a person who shall have expressly during his lifetime, by will or otherwise, expressed his desire that his body should be dissected, *unless* the wife or husband, or one or more of the nearest known relatives in the same degree, shall object. Thus, if of two children one objects and the other consents, it would appear that the body cannot be dissected. But if the wife or husband survive and consents, while the children object, the dissection may take place. In either case, however, the licensee should take care to see that a certificate of cause of death by a 'qualified medical practitioner,' whether the deceased have been attended or not by such during his last illness, be given, and that the Home Secretary have at least seven days' notice, if not already given, of the place where the dissection will take place. He must also see that the body¹ is, after dissection, properly interred in consecrated ground within six weeks of removal to the 'school,' and that a certificate of this be sent to the 'inspector of anatomy schools.'

Punishment.—Any person who carries on dissection without complying with the above provisions is liable to prosecution, and upon conviction to imprisonment up to three months, or a money fine up to £50.

Akin to this subject is that of making 'post-

¹ This means the whole of the body, and the abstraction and non-interment of any part of the body would be an offence punishable as hereafter mentioned.

mortem' examinations. These can only be made upon

(1) The body of a person whose nearest relatives desire or consent to a 'postmortem' for the purpose of ascertaining cause of death.

(2) The body of a person whose cause of death is required to be certified by a postmortem examination by a legal¹ authority (coroner, magistrate or judge).

VII. Vivisection.

Under this heading the rights of 'medical men' have been considerably curtailed of late years.

A person can only now perform painful experiments on *vertebrate animals*, (a) upon license to be obtained in Great Britain from the Home Secretary, and in Ireland from the Secretary of State for Ireland; or (b) upon license of a judge in a criminal trial of the High Court of Justice in England, or in the Superior Courts of Scotland or Ireland, as the case may be, if the judge in his discretion considers such experiments will assist the elucidation of the case. The judge indicates the person to make, and the method of making, the experiments.

(a) The license of the Home Secretary or the Irish Secretary is obtained in the following manner :

¹ The bodies of felons who have received capital punishment are no longer liable to be *dissected* as a matter of public right, but, it is conceived, might come under either of the first or second heads on pp. 41, 42, and a 'postmortem' examination is invariably made. Hospital patients on their death are not unusually subjected to a 'postmortem' examination without the consent of the relatives of the deceased; but the practice is illegal, and if the consent is withheld, the remedy for the authorities in all but the clearest cases would be, with perfect justice, to refuse a certificate of death, and give notice to the coroner's officer.

(1) 'The applicant must be a 'qualified medical practitioner.'¹

(2) He must show good reasons for granting the license to him.—See below, Conditions.

(3) He must be certified as a proper person by at least one of the following persons, namely : the president of the Royal Society ; the president of the Royal Society, Edinburgh ; the president of the Royal Irish Academy ; the president of the Royal College of Physicians of London, Edinburgh or Dublin ; the president of the Royal Colleges of Surgeons of the same places ; the president of the 'General Council' ; the president of the Faculty of Physicians and Surgeons of Glasgow ; the president of the Royal College of Veterinary Surgeons,² or the president of the Royal Veterinary College² ; *and* at least one of the following persons (unless he be one himself), *i.e.* : a professor of physiology, medical anatomy, medical jurisprudence, materia medica, or surgery of any university of the United Kingdom, or University College, London, or college of the United Kingdom incorporated by royal charter. After the license is obtained the practitioner must adhere with the greatest care to the restrictive conditions under which the experiment or experiments are to be made.

The Conditions are—

(1) The experiments must be performed to advance

¹ Not required by the Legislature, but it is a necessary qualification in practice.

² The certificate of these persons is useless, unless the applicant is applying for a license for the purpose of advancing veterinary knowledge only.

a new discovery in physiology, or prolong life, or alleviate suffering, unless upon certificate to the Home or Irish Secretary it shall appear that the experiment is for the purpose of checking or testing some statement previously made which, if established, will advance medical science.

(2) The animal must be made unconscious by an anæsthetic (not curare or urari), unless upon such last-mentioned certificate it shall be shown that to put the animal under an anæsthetic would frustrate the experiment.

(3) If, after the experiment be over, the pain would otherwise continue, the animal must be killed before returning to consciousness, unless upon such certificate it shall be shown that to kill the animal immediately would frustrate the experiment, in which case the animal must be killed as soon as the object of the experiment is attained.

(4) No such experiment must be made for illustrating a lecture at medical schools, colleges, or elsewhere, unless it is shown on such certificate that such illustration is absolutely necessary ;

(5) Nor for attaining manual skill ;

(6) Nor for the purpose of general exhibition.

(7) Cats, dogs, horses, mules, and asses must not be used, unless it can be shown that the experiment can only be made on animals of their constitution, and that none other of similar constitution are available.

Penalty.—The penalty for vivisecting contrarily to the above provision is—for a first offence, a money

fine up to £50; for second and subsequent offences, a money fine up to £100, or imprisonment for three months or under.¹

VIII. Inoculation with Small-pox.

This is now forbidden in the United Kingdom under the following penalties :

In England and Wales the person inoculating is liable to imprisonment for one month upon summary proceedings before Justices of the Peace or a stipendiary magistrate; in Scotland to two months' imprisonment, or a money fine up to £5, upon proceedings before the Sheriff; and in Ireland to six months' imprisonment upon summary proceedings before two Justices.

IX. Lunatics.

As it is the peculiar province of a medical man to have the care of lunatics, and frequently to come into contact with them, it behoves him to bear in mind, as to *private asylums and patients*, the following points as being most salient features of a very complicated subject :

1. A medical man *treating* a single patient as a

¹ The proceedings can be commenced by anyone (except that in the case of proceedings against a licensed person the consent of the Home Secretary or Irish Secretary of State must first be obtained) before two justices of peace or a stipendiary magistrate, who may, unless the accused object, proceed to hear the case and award punishment. But the accused may object to their jurisdiction and have the case tried at assizes, and even after trial by magistrates may, in England, appeal to quarter sessions. In Ireland one-third of the penalties may be awarded to the informer.

lunatic, or person of unsound mind, *for confinement in an unlicensed house, although not for gain*, must at once give notice to the constituted authorities,¹ under a penalty if he fails to do so, and a further heavy penalty if he gives false information. In England the authorities are the Board of Lunacy Commissioners and the Justices of the Peace for the county respectively;² in Scotland the Scotch Board of Lunacy Commissioners; and in Ireland the Registrar in Lunacy.

The patient must be allowed visits by the proper officers, and may be removed by the constituted authorities.

2. A 'medical man' may have the care of *one* lunatic for profit, whether for board alone or for board and treatment, in his own house, if he takes care to have with the patient the usual medical certificates and 'order.'

The requirements for medical certificates are treated below under that head.

The 'order'³ to be obtained **in England** is (except in the one case of urgency noted below) that on petition by a husband, wife, or near relative of the lunatic not further removed than a great-grandparent, or his or her descendant, or a descendant of the lunatic.

The petition must be presented in proper form to a Judge of a County Court, or a magistrate, or the

¹ The notice is in special form, under the Lunacy Act of 1845.

² See, as to their respective jurisdiction, the third head below p. 49.

³ The order is not valid if any one of the persons making it is the relative-petitioner.

committee of the Justices of the Peace thereto appointed from time to time.

The one excepted case is that of urgency, for which there must be very strong reasons, such as the protection either of the lunatic or other persons. The urgency order may be given by a relative as above defined, preferably the husband or wife. The lunatic may not be *detained* under such urgency order more than seven days, unless the proper authorities have made the confirmatory order on petition, or a petition therefor is pending.

The authorities may call in the assistance of an independent medical witness, whose fee is payable by the Poor Law Guardians. For the amount, see Appendix, Table 'C.'

In Scotland the order must be that of the Sheriff of the County, or, failing this, the sanction of the Scotch Lunacy Board must be obtained within fourteen days to an order by a relative.

In Ireland the requisite order is that of a near relative.

As soon as, in England, the 'medical man' undertakes the charge of the lunatic, whether he be the proprietor of the house or merely medical attendant, he must give notice to the 'Clerk of the Visitors' and the Lunacy Commissioners; and in Ireland notice must be given to the Inspector-General of Asylums for the district.

A medical man or attendant **in England** physically restraining a lunatic can only do so for the purpose of medical or surgical treatment (for disease), or to pre-

vent bodily harm to the lunatic or others. The medical attendant must, under penalties, transmit a proper certificate of the facts to the Lunacy Commissioners. Further, he must keep a careful diary, and forward a copy quarterly to the same officers.

If the medical certificates and order be in due form, and the above provisions are duly observed, the 'medical man' having the care of a lunatic will not be liable to incur the severe penalties or chance of prosecution, civilly or criminally, by an aggrieved person which would otherwise fall upon him.¹

3. **Licensed Houses.**—To keep two or more lunatics, a 'medical man' must, under heavy penalties, obtain and renew a license for the house where it is proposed to keep them. In the cities of London and Westminster, the borough of Southwark, and the parishes and places included in a seven-mile radius from these, as well as the county of Middlesex, the authority for granting licenses is the Board of Lunacy Commissioners for England. In all other parts of England the proper authority is the Bench of Justices for the county in Quarter Sessions. In Scotland the authority is the Scotch Board of Lunacy Commissioners. In Ireland the Bench of Justices for the county in General or Quarter Sessions is the authority, subject to review by the Irish Lord Chancellor.

If the 'medical man' have a license in force,² he

¹ The medical attendant can in England be changed by order of two Lunacy Commissioners, and any person obstructing the change is guilty of a misdemeanour.

² In England *new* licenses, or licenses for increased accommodation, except for idiots and imbeciles, will not now be granted.

may only receive lunatics upon the receipt of proper certificates and orders, as in the case of single patients (See above, pp. 47 and 48.) If he carries out these provisions, and attends to the statutory provisions regulating the detention and care of lunatics, he is protected from any action by or on behalf of the lunatic; but the certificates and orders must be in due form to afford him protection, and no person should have the care of lunatics without a careful study of the various Acts relating thereto.

4. **Medical Certificates** of lunacy must, as a rule, be given by two¹ properly qualified medical men,² acting separately,³ and after careful personal examination.⁴

A false certificate entails a prosecution and heavy penalties, besides which, both for false and negligent⁵ certificates a patient may recover heavy damages. See p. 61. In the case of urgency, the certificate of one qualified medical man is sufficient, but the urgent circumstances must be fully stated upon the certificate, and a confirmatory certificate by another

¹ In England they must not stand to each other in the degrees of relationship mentioned on the next page as prohibited between medical men and the petitioner.

² See **qualification** as to the distinction made.

³ In one case, where two medical practitioners went together to the house of the alleged lunatic, and after going in together, one of them left the other alone with the patient and returned as soon as the other had left, the practitioners were thrown in an action against them for damages.

⁴ The ordinary form of lunacy certificate appears in the Appendix, Form 'K.'

⁵ In view of the many risks which medical men run in granting these certificates, the safer course to be adopted is to refuse a certificate unless the case is one of lunacy beyond all question; the *safest*, to refuse the certificate altogether.

qualified medical man must be obtained within three days in Scotland and fourteen days in Ireland, while in England a justice's order must be obtained as above mentioned (No. 2).

Qualification.—The persons qualified to give certificates in England and Ireland are 'registered medical practitioners' not otherwise disqualified as mentioned below, and in Scotland registered physicians and surgeons, registered M.D.'s of any university of the United Kingdom, and registered army and navy practitioners in actual practice.

Disqualifications.—The following medical men, though otherwise qualified,¹ may not, under penalties, give certificates :

In England—

(1) The petitioner for the order or person signing the urgency order, or such a person's husband or wife, or father, mother, son, daughter, brother or sister, by blood or marriage (*i.e.*, in-law), partner or assistant.

(2) The licensee or the registered medical attendant of the house, or the person having charge of the patient, or the relative of any such person in the degrees above mentioned, or their partners or assistants.

(3) Any person interested in payments made by or on account of the patient, or the relative of such person in the degrees above mentioned, his partner or assistant.

(4) The commissioner or visitor in lunacy.

¹ If without the necessary *prima-facie* qualification, the person giving a certificate is liable to criminal prosecution.

In Scotland—

(1) The medical superintendent, ordinary medical attendant or assistant medical officer of the house or asylum into which the patient is to be admitted, except in cases of emergency, when such a person may give the certificate, in which case it must be confirmed within three days by the certificate of two fully qualified persons.

(2) A medical man having a patrimonial or pecuniary interest in the house or asylum, or whose father, brother, or son is superintendent of the house or asylum.

In Ireland—

(1) Any person wholly or partly the proprietor, or the regular professional attendant of the house where the patient is detained.

(2) Any person whose father, son, brother or partner is wholly or partly proprietor or regular professional attendant.

X. Habitual Drunkards.

To establish an asylum or retreat for habitual drunkards it is necessary—

(1) To obtain a license. For this purpose application must be made in England to the Clerk to the Justices for the borough or city, or to the Clerk of the Peace for the county in which the retreat is to be established ; in Scotland, to the Town Clerk of the Parliamentary borough, or the Clerk of the Peace of any other borough or town, or Clerk to the County Council ;¹ and in Ireland, to the Clerk of the Peace for the

borough or county. The license requires a Government impressed stamp of £5, and 10s. for every patient above ten.

(2) The person to be licensed must not be a licensee of a lunatic asylum (see p. 49), and must conform to all the rules laid down from time to time by the Home Secretary.

(3) Upon incapacity by sickness, or mental infirmity, or bankruptcy, or death of the licensee, the license may be transferred by order of Justices.

(4) The patient may be received only after due written application by himself in special form, attested by any two Justices of the Peace, and a statutory declaration by two other persons that the patient is an habitual drunkard. Notice of the reception must be at once sent to the borough or Town Clerk or Clerk to County Council, as the case may be.

(5) The patient shall be *detained* even against his will for the term mentioned in the application, which must not exceed twelve months in any case, can be recaptured on escape, but may be discharged by order of the Justices of the Peace or County Council, as the case may be, on application of the licensee. The patient must also be inspected from time to time by the Inspector of Retreats.

(6) Leave of absence may be given by a licensee to a patient with the consent of a Justice of Peace, or in Scotland, in certain cases, the County Council.¹

¹ The execution of this Act in Scotland rests now with the County Councils, so far as originally vested in the justices of the peace.

(7) The licensee *may* be a registered qualified medical practitioner, but if not such *must* employ a 'registered medical practitioner' as attendant at the 'Retreat.'

(8) Upon the death of a patient the licensee, if a 'registered medical practitioner,' or if not the medical attendant, must certify the cause of death to the coroner and also to the Clerk of the Peace¹ or County Council, the registrar of deaths and the person who made the last payment for the patient, *or*, instead of the last-named person, one of those who signed the statutory declaration for the patient's admission.

(9) Ill-treatment of a patient, or any wilful failure to comply with the above provisions, is punishable summarily by Justices in Petty Sessions by a money fine up to £20, or imprisonment up to three months. From the decision of this court there is an appeal.

(10) Non-compliance with any of the above provisions involves the licensee or medical attendant, as the case may be, in civil proceedings for damages by the patient injured, which must, however, be brought within two years after the action complained of has happened. The detention of a person improperly admitted would be a continuing breach of the provisions, and the time for commencement of proceedings would run from the last day of detention. The patient may, upon fresh applications, with statutory declarations in due form, be readmitted for further periods, not exceeding twelve months on each application.

¹ See note last page.

XI. Indecent Writings, Medical Tracts, Pictures, etc.

To expose these in or near public places, or to distribute them publicly, is now punishable by fine and imprisonment. Pamphlets on 'nervous debility,' secret diseases, and indecent pictures representing diseased persons are within the statute.

XII. Infectious Diseases.

The medical practitioner or practitioners attending a case of small-pox, diphtheria, erysipelas, membranous croup, scarlatina or scarlet fever, typhus, typhoid, enteric, relapsing, continued, or puerperal fevers, and any other diseases which the local authority may from time to time declare infectious, must notify the nature of the case, particulars of patient, with name and address, to the Medical Officer of Health for the district in which the case occurs, under a penalty in case of default. If the person be a private patient, the medical practitioner may claim a fee of 2s. 6d ; but if it be a case which he attends in his public capacity, 1s. Forms to be filled up may be had of the local authorities gratis.

XIII. Spirits.

A medical man qualified to supply medicines may sell spirits, as incidental to, and compounded with, medicines, without an excise license ; but for the manufacture of essences, perfumes, etc., by distillation,

he must apply for a license from the licensing Justices of the Peace, whose Clerk will give him full information.

XIV. Poisons.

Though the law relating to the sale of poisons concerns those medical practitioners who supply medicines,¹ it is deemed more convenient to detail the law under the chapter dealing with Chemists at the end of this book (part ii., chap. ii., *q.v.*).

XV. British Pharmacopœia.

All persons compounding and supplying medicines which are in fact those of the British Pharmacopœia, must, under a penalty, compound and supply them in accordance therewith.² (See also next heading.)

XVI. Adulteration.

Drugs and medicines have to be wholesome and pure, and any person keeping open shop for the sale of such must permit the Inspector of the Pharmaceutical Society to enter and take samples. The maximum penalty for having drugs and medicines impure or below standard is £5 for the first offence, £10 for the second, and £20 for the third and each subsequent offence.³

¹ Such persons are physicians, surgeons, apothecaries, and certain medical graduates. See p. 16, note.

² See also p. 14 as to copyright, and p. 114 [4] as to recovery of charges.

³ Should the impurity or inefficacy of the drugs or medicines result in damage to a patient, he has his private remedy; see next page.

The Apothecaries' Society in England have power over apothecaries' shops, and may destroy unwholesome or bad drugs, and may impose a similar penalty of £5, £10, and £20, recoverable as to penalties above £5 by action at law, and as to penalties under £5 by proceedings before justices.

Apothecaries are also bound to sell drugs to persons demanding them (subject to the law as to poisons, for which see last page and p. 115), and to compound prescriptions faithfully under penalties : for first offence, £5 ; second offence, £10 ; and third offence, forfeiture of certificate.

CHAPTER IV.

MEDICAL MEN IN THEIR PRIVATE RELATIONS.

Patients. — The relationship of ‘medical men’ towards their patients—*i.e.*, the person or persons whom they treat—involves not only a consideration of their duties to and their rights against their patients, but also a consideration of how far those rights and duties may be affected by third persons.

Duties.—1. Skill—negligence.

Above all things, it is the legal duty of every ‘medical man’ to display a

Reasonable Degree of Skill,

care and knowledge in the treatment of his patient. Thus, performing an operation which ought not to be performed, or performing badly and without skill an operation which it is right to perform, or if in the compounding of medicines he uses wrong or adulterated drugs, or, if they be the right drugs, using them in improper quantity, are instances where the medical man would be *primâ facie* liable in damages.

What constitutes reasonable skill, in the trial of an

action for damages in respect of *malapraxis*, is a question for the jury, or, if there be none, for the judge.

Throughout this chapter it is necessary to bear in mind that the acts, negligence or contracts of a partner or assistant (whether 'qualified' or not), if they be within the ordinary scope of his duties, are the acts, negligence or contracts of the medical man whose partner or assistant he is, and may be enforced against and by him. For the intentional negligence, or acts out of the course of his duty, or acts not incident to the ordinary duties of his employment, of his partner or assistant, a medical man is *not* responsible, unless they are done at his instigation, or he ratifies them either by taking the benefit of them or in some other way.

It is difficult to lay down an absolute rule of law upon this point, but it may be assumed, from the cases decided, that if a 'medical man' displays the usual knowledge, skill and care (in the absence of special contract with his patient), his conduct of the case will not be the subject of an action. A mere ignorance of special appliances or methods not in general use would not be actionable in the case of a general practitioner, although it might be in the case of a specialist, who, of course, holds himself out as possessing special knowledge.

Persons who may sue. — The patient or person injured by the negligence may claim damages, whether the 'medical man' was or was not called in, or was or was not promised payment by the patient. Any negligence, moreover, may be a matter of counter-

claim by the patient if the medical man brings an action for his fees.

Death of Patient.—If the patient's death be caused by the negligence of the 'medical man,' and the patient has not during his or her lifetime recovered judgment for damages, or received compensation from the 'medical man' for the injury, the patient's wife, husband, parent, or child, or in default his or her personal representative, may recover damages to the extent that the pecuniary welfare of such wife, husband, parent or child is damaged by the patient's death.¹

Gross or Criminal Negligence.—Where the medical man acts either (1) maliciously, or (2) so recklessly that he must be taken to have acted maliciously, the injured person may prosecute criminally, or recover exemplary damages in a civil action.

No precise definition of gross negligence can be given ; it is a question of fact based upon the circumstances of the case, and must be decided by the jury, or, if there be none, the judge. What would be mere ignorance in a general practitioner, might be gross negligence in a specialist. Ordinary negligence consists in conduct which would not be committed by a person of *average* care and ability, acting *bonâ fide* in the medical man's position, and gross negligence

¹ If the patient commence an action for damages, and die before recovery of judgment or settlement of action, subject to his representatives' rights to institute fresh proceedings as above, the action falls to the ground, but the medical man could not recover either his charges for services if guilty of negligence, nor his law costs in the action as against the patient's estate.

consists in conduct which would not be committed by a person of *small* care and ability, acting *bonâ fide* in the medical man's position.¹ If a patient wishes to proceed against one out of several medical men who are guilty of negligence, he may do so; and if the patient recovers judgment, the practitioner can have no claim to contribution from the others.

Incorrect Certificates.—Upon the same lines is the law with regard to the liability of a 'medical man' to a patient for an incorrect certificate of lunacy.² In all such cases, if there be any doubt in the mind of the medical man, the patient should receive the benefit of the doubt, otherwise heavy damages may be recovered.

Truthful Statements to Patients.—A correlating legal duty of a medical man is that of telling the patient the nature, so far as he can, of his or her complaint; and any damages naturally resulting from a breach could be recoverable from the 'medical man.'

2. Recognised Methods of Cure—Experiments.—Akin to the last heading is the duty which a 'medical man' is under of adopting only recognised methods of cure. The danger of experiment is obvious, and any deviation from customary methods could, if unsuccessful in their object, only be made with the patient's

¹ The fact of an inexperienced and unqualified person attempting a cure may be held to be of itself *primâ-facie* evidence of the existence of gross negligence.

² But see above, p. 49, as to non-liability of a person having charge of a lunatic if the certificates, though incorrect, are otherwise in order.

consent. If the patient be a person who, by reason of tender age,¹ coma, lunacy, idiocy, or the like, is incapable of deciding for himself or herself, then a person having express or implied authority, such as a parent, guardian, lunatic's committee, could *perhaps* free the medical man from liability for non-success. But the consent could only bind in any case where the party assenting has all the facts and chances clearly explained. In the alternative a medical man might obtain permission to exercise an ample personal discretion, a *bonâ fide* exercise of which would be a good defence to an action for negligence. If, however, the method adopted be prohibited by law, as in the case of procuring abortion or inoculation for small-pox, the patient's consent would not prevent prosecution.²

3. **Abuse of Confidence—Secrecy.**—As the relationship of a medical man to his patient is of a confidential description, the law visits heavily any abuse of confidence. The case quoted on page 38 [2] will illustrate this. Hence, in cases of

Bargains with Patients,

although it is open to a medical man to make a bargain as to the amount payable to him for his attendance and services, the bargain may be reviewed by a court of law, and, if considered unjust, may be varied. There seems, however, no reason why, if the patient 'had his hands untied' and ample means of forming

¹ Generally speaking, boys above fourteen and girls above sixteen can decide for themselves.

² See above, p. 40.

a judgment, the medical man could not enforce a contract of any description which might be highly beneficial to him; but an inadequate advantage derived from the contract by the patient would be *prima facie* evidence of unfairness. So also in the case of

Gifts

made by a patient to his or her medical man; they cannot be retained even as against the giver,¹ unless either (a) the relationship of medical man and patient does not exist at the time of the gift, or ceases afterwards for some time, and there is no effort at recovery by the giver, or (b) the giver can be shown to have acted with perfectly unfettered or unbiased judgment. Under the usual circumstances, it would be next to impossible to put this in evidence.² On the other hand,

Legacies

are on a different footing, and, in the absence of

¹ In one case a gift was set aside many years afterwards by the personal representatives of the giver, though no undue pressure was shown.

² There is a species of gift called *donatio mortis causa*, which is not of unusual occurrence, from moribund patients to their medical attendants. For such a gift to be valid there must be three conditions satisfied:

(1.) It must be made by the donor in present anticipation of death.

(2.) It must be made to take effect upon the death of the donor by the illness during which it is made.

(3.) There must be a handing over to the donee, as the gift of a cheque, the delivery up of bonds payable to bearer, etc. A cheque is only effectual if cashed during life, and under certain conditions the donee has to pay legacy duty.

undue influence,¹ are unimpeachable after the death of the patient.

In the case of

Contracts with Lunatics and Idiots,

the duty of abusing no confidence is accentuated, and all contracts made with them must bear the closest scrutiny, nor will a court of law direct a contract to be enforced against the lunatic if the medical man has not performed his part, if the court thinks that the contract is at all inequitable. For attendance and services rendered the lunatic's estate is liable, but it is best in all such cases for the medical attendant to make the contracts with the person having the legal custody or guardianship of the lunatic, and if such person be the duly appointed committee or guardian, he *alone* can be dealt with.

Contracts with Infants—

i.e., persons under the age of twenty-one years—are void, except for medical attendance and services, which are treated below (p. 71).

It is the legal duty of every 'medical man' to keep the

Secrets

of his patients confided to him, except where the duty to speak is paramount, as in the public interest, or as a witness.² For a breach he is liable to an

¹ Undue influence=such pressure exceeding persuasion as leaves the patient practically no independent will in the matter.

² See p. 39.

action for damages. Slanderous or libellous statements by him, founded upon such means, would entail exemplary damages, nor would a defence that the statements were true, or believed to be true in substance or in fact, prevent criminal conviction, unless they were made under pressure of an obvious duty towards the person to whom made.

4. **Force—Constraint.**—A medical man must not use force, violence, or constraint against his patient's wish, and any deviation from this duty involves him in great risk. Thus, the medical examination of a maid-servant by her mistress's wish, or of a girl charged at a police-court by the magistrate's direction, if the party to be examined object, involves the examiner in the chance of an action for heavy damages. So, also, the administration of noxious drugs or opiates, to the injury, temporary or permanent, of the patient, and against his wish, involves the medical man in the chance of civil or criminal prosecution. If the patient consent under threat, the medical man is still liable; but if the consent be given in any other way, however unwillingly, he is not liable.¹ So, also, where a medical man

Retains or Constrains

a person as a lunatic or insane person without possessing proper qualification and certificates (see pp. 47 [2] and 50 [4]; and see page 48 as to physical force in England), he is liable to heavy damages

¹ As where a girl believed that the medical man could legally compel her to be examined.

for false imprisonment, but not for mere signature of the certificate, *bonâ fide* and without negligence. If asked to deviate from this duty by pressing considerations, the 'medical man' should at least obtain a substantial indemnity from the person urging the considerations. But even this could not in most cases be enforced by action-at-law, nor would it prevent criminal prosecution where applicable. However,

Reasonable Force or Constraint may be safely used where the patient might, but for the force or constraint, do injury to himself or others.

In many of his private duties the medical man has corresponding public duties, which have been treated of in the second chapter; while in other cases his rights and duties are identical with those of British subjects generally. In others, again, his duties are unimportant compared to his correlating

Private Rights,

which are next treated.

The chief private right to be discussed is that of the medical man, *if registered*, to

Recover his Reasonable and Proper Charges and Expenses¹

against the person or persons employing him.

¹ Fees and charges do not include travelling expenses, unless specifically contracted for at the time or promised afterwards.

The registration¹ must be effected at or before the trial of the action, but not necessarily when the services were rendered, although the 'medical man' must have been at the latter time a person qualified for registration;² and even though the medical man sue on a bill of exchange or promissory note, if the bill or note be given for medical services, he must show that he is registered. What is reasonable and proper is a question of fact for the jury, or, if there be none, for the judge, to decide, except in the rare cases where the Legislature has laid down the fees to be charged, as in the case of Public Vaccinators, etc. Custom has rendered the aid which the law has denied, and the Medico-Chirurgical Tariffs of the Shropshire Ethical Branch of the British Medical Association are frequently recognised as applicable to medical and surgical attendances. Failing any special contract, and where the tariffs³ are not held to be applicable, the jury or judge, as the case may be, decide upon the evidence the amount payable.⁴

The right to recover his charges and expenses by a medical man arises, of course, out of a **contract**, express or implied. This contract is, if express, generally verbal, but in some cases must be in writing.

¹ For method of registration see p. 17.

² As to apothecaries the law appears to be different, *i.e.*, the apothecary must show that he was registered at the time the services were rendered.

³ These tariffs are supplied to the profession by H. K. Lewis, of 136, Gower Street, London.

⁴ A practitioner may charge according to the pecuniary circumstances of the person employing him, whether such person be the patient or not.

Contracts necessarily in Writing—

1. Contracts for employment by a Corporation, Local Board, or Board of Guardians should be in writing, and under seal.¹

2. Contracts for employment for a term of more than one year, or which, in the ordinary course of things, cannot be completed within one year from date of contract.

3. Contracts for more than £10 worth² of goods, *not services*, require to be in writing, unless either (*a*) a deposit be paid at the time, or (*b*) a part of the goods be accepted by the purchaser at the time. The case of a patient ordering more than £10 worth of artificial teeth from a 'dentist' is the commonest example under this head, or a person ordering more than £10 worth of drugs from a 'chemist.' If, although the total indebtedness of the person be over £10, the account consists of items not exceeding £10 ordered at various times, the contract for each item may be verbal.

As a rule, the contract, though verbal,

Must be Express ;

that is, the person to be charged must have himself required the services of the medical man ; but in some cases the medical man would act safely without any

¹ A 'limited' company can generally contract through its properly appointed manager, secretary, or other agent, but if the contract be made with the company direct, it must be in writing and under seal.

² Such cases are, of course, very unlikely to arise in the practice of medical men ; they are, however, included here for the object of attaining terseness, being referred to in the chapters on dentists and chemists, *post*.

express orders from such a person. The commonest of such cases are :

(1) Where the medical man has rendered services to the patient, of which the patient has taken the benefit; where, in fact, the patient need not have done so, as in the case of medicine or drugs supplied without order, but consumed.¹

(2) Where the medical man has rendered his services to the patient as an infant (*i.e.*, under the age of twenty-one years), and after reaching full age the patient has promised payment.

In all cases of express contract, and in case No. 1 of implied contract, there

Need be no Promise to Pay,

but of course there must not be a direct refusal on the part of the patient at the time either to accept his services or to pay his fees, for if there be the medical man is taken to have given his services.

The following are

The Persons who may Sue

for recovery of their charges and expenses, subject to the special remarks on the next page :

Ordinarily the registered medical man rendering the services or supplying the goods should himself sue.

If, however, a registered assistant has rendered the

¹ A mere attendance on a patient who has no means at, or during the attendance, of signifying his assent, and does not thereafter confirm it in some way or other, cannot be the subject of a claim from the patient on the mere ground of tacit acquiescence.

services, either he or his registered principal may be plaintiff, and if the principal be unregistered the assistant could alone sue, but the patient must not have known that the assistant was such, or the assistant must have had some pecuniary interest in the debt, as a commission.¹

If the medical man die without leaving a partner, his executor, or, if he has none, his administrator, must be plaintiff.

If the medical man be an undischarged bankrupt at the time that the services are rendered or goods supplied he cannot personally recover, but his trustee in bankruptcy may *for the benefit of his creditors*.

In the case of partners the proceedings should be commenced in the partnership name, though one partner may sue the patient he has attended in his own and sole name.

Even where the case requires attendance in two qualifications, one partner having one qualification, and the other partner the second qualification, needed, the partnership may sue.² So also can partners sue where one of them is *unregistered*.

The Persons to be Sued

are as follows :

¹ Dishonest collusion by a registered medical practitioner or dentist with an unregistered person, as where the unregistered practitioner does the work and merely borrows the name of the other, is now gross professional misconduct. See above, p. 19, note 2.

² Cases of this nature cannot arise in the practice of partners, *all* of whom have been registered for the first time since 30th June, 1887, as such persons are required to be registered in a treble capacity. See p. 15, note 2.

If the patient employ and be of full age, either male or an unmarried woman (spinster or widow), the patient is to be sued, or, if he or she be dead, his or her executor or administrator.¹

If the patient employ and be a *married woman*, whether of full age or not, then both husband and wife should be made defendants, especially if they are living together. If living apart, the wife had better be sued alone, unless she has been forced to leave her husband by his misconduct, *or* he has deserted her, *or* there is an arrangement for her maintenance which the husband has broken; in which cases the husband may be sued. A notice by the husband repudiating liability inserted in newspapers or sent by letter to the medical man does not affect his liability.

As to lunatics and idiots, their committee, where they have such, or in default they themselves, must be made defendants.

As to infants (*i.e.*, persons under twenty-one years of age), who are males or unmarried females, their parent or guardian, if such there be, may generally be sued, unless the parent or guardian has either provided the necessary medical attendance or given the infant means to procure the same, in which and any other cases the infant must be sued.²

¹ Where a patient promised to leave her medical attendant a legacy, who, *in consequence*, sent in no account during the patient's life-time, but received no legacy at her death, it was held he could not recover the debt from her estate. But a mere expectation without a direct promise did not prevent such recovery.

² For cases of married women, under twenty-one years of age, see above.

As to servants and employés, a master calling in a medical man to his servant or employé is, in the absence of special notice, personally responsible to the medical man; but whilst a servant or employé cannot thus bind the master without his sanction, an apprentice usually may, being entitled to medical attendance from his master.

Police Prisoners.—The police who call in a medical man to examine a person in police cells or elsewhere are liable. The fee allowed in the Metropolis in day-time (from 6 a.m. to 11 p.m.) is 3s. 6d. for a visit, at other hours 7s. 6d. The inspector in charge should hand the medical practitioner a certificate of attendance, which should be forwarded or presented for payment in accordance with the directions upon the certificate.

Poor Persons.—An overseer or poor-law Guardian, or even a stranger, is liable for medical attendance at his direction upon a poor person.

Paupers are usually (and properly) treated by the medical officer for the parish workhouse or union, but in cases where paupers meet with accidents, any medical man may treat them, and recover for attendance from the Guardians of the parish where the pauper is settled, but must hand over the case to the medical officer for the parish in due course.

Agents.—A servant cannot bind a master nor an agent a principal for medical services rendered at his instance, without the express or implied authority of the master or principal to a third party. Thus the station-master or lower employé of a railway company

should be sued personally for services rendered at his instance to a railway passenger or servant unless he has especial authority, when the company could be sued, as it could where its general manager has directed the services to be rendered. If, as generally, the employé is a man of straw, the medical man must either rely on the company's moral sense of liability, or refuse to give his services without confirmation from head-quarters.

Insurance Companies.—As a rule a medical man examining 'lives' and reporting to the company has no claim upon the company; he should either obtain his fee from the proposed 'life,' or have an express contract in writing and under seal with the company.

Corporations, Companies, Friendly or other Societies, or Local Bodies should be sued as such, and not their officer who gave the order, unless he has exceeded his authority in so doing.

Clubs.—The proprietors of proprietary clubs, the committees of clubs whose committees are the responsible bodies, and the whole of the members of medical clubs whom it is desired to make responsible, should be sued.

Governors and Committees of Hospitals or Asylums are not *personally* liable for medical fees and salaries unless they have held themselves out as such.

Proprietors of Licensed Houses, retreats for inebriates, and others having charge of lunatics or idiots, whether for gain or not, are responsible for medical attendance upon their charges.

The

Method of Recovering

the charges by process of law in England is described in detail in chap. v., and, subject to the succeeding remarks, applies to all degrees of medical men alike.

In some

Special Cases

the several degrees of medical men are subject to distinct regulations.

A Physician cannot recover any fees as such (1) if he is bound by a by-law of his college prohibiting him from suing for his fees;¹ or (2) if he has been grossly unskilful or careless.²

The unskilfulness must be *gross*; a mere slip will not disentitle the physician to recover all remuneration, but would be a subject of set-off *pro tanto* by the patient. On the other hand, a total failure to effect a cure, *if undertaken*, will prevent recovery of fees unless the treatment or medicines be given under superior orders known and acquiesced in by the patient.

In some cases it is doubtful whether the patient is liable for medicines as well as attendance supplied by the physician. The question is one of fact, to be decided by the jury, or if there be none, by the judge, upon the circumstances of the case. If the charge for attendance or for medicines be large, it will generally be considered to include the other charges. The point arises more often in rural than urban practices.

¹ If a qualified surgeon, he could, of course, recover for surgical services.

² As to malapraxis generally, see p. 59.

Surgeons, who are only registered as such,¹ can only recover for services and medicines supplied in surgical cases.² But the medicines need not necessarily be given to assist an operation if applied to prevent one.³

They and **Apothecaries** are subject to the same rule as physicians as to medicines supplied as well as attendances made, and both come within the same rule as to malapraxis.

Medical graduates are subject to the same two rules. And as to the cases for which they may recover for medicines, see p. 16, note 5.

With regard to what are called

Absolute Rights—

that is, rights of a medical man to immunity of himself or his property from injuries—he is of course on a par with other British subjects, but one case in which he is open to injury requires special mention. The case is that of

Defamation,

oral (slander) or written (libel).

Anything said or written of a medical man imputing misconduct or incapacity in his profession or business, whether by words, letters, telegrams, pictures, caricatures or otherwise is actionable,⁴ unless it be made

¹ As to recovery by a surgeon in midwifery cases, see p. 15, note 5.

² There is no arbitrary rule as to what is, or is not, a surgical case. Thus dropsy, if requiring manual treatment, is considered surgical.

³ A ship's surgeon may, if he wishes, sue for his salary in the Admiralty Court of the Probate, etc., Division, England, and, if he does so, has special privileges as to procedure.

⁴ The medical man need not prove having received any special damage, as this is from the nature of the case presumed.

bonâ fide, and out of some moral duty, as where one medical man is consulted by a third person as to the conduct or ability of another, and expresses a *bonâ fide* opinion *without malice*.¹ If the defence proves that the statements complained of are true in substance and in fact, the action falls to the ground ;² but if so pleaded, and the defendant is unable to prove same, the plea aggravates the offence, and heavier damages may and should be given to the defamed 'medical man.'

It is of itself³

Not Libellous

(1) for one 'medical man' to refuse to meet another, *unless* accompanied by some such words as, 'He is a bad character ; none of the men here will meet him,' or the like ; (2) nor to say of a 'medical man' that he meets homœopathists, though this might be *likely* to damage his practice ; (3) nor to say of a medical man, 'He is a quack.'

It would appear that even an unregistered medical man might, whether qualified to be registered or not, bring an action for defamation in his professional capacity. But this is not true in civil cases, where the

¹ This rule holds good even where other parties not interested in the communication are present.

² In criminal prosecutions for libel, a mere defence of 'truth' will not excuse if the libel is of such a character as to provoke a breach of the peace, *i.e.*, uttered under peculiar aggravating circumstances, or in a public place.

³ If damages ensue, and the medical man can prove them to be the natural result of the words uttered, he may recover the amount of such damages, even though the expressions are not *of themselves* libellous.

words complained of by an unqualified person imputed the absence of such qualification.

The **persons to be sued** are the persons who originally uttered the libel and every person repeating it, or in certain cases the person repeating may alone be made responsible for the whole of the damages, as where the words were uttered *bonâ fide* and out of a moral duty to another, who, having no such duty, repeats them to a fourth person. Repetition does not mean actual verbal or written restatements; the publisher and the booksellers or newsagents of a book or paper containing a libel 'repeat' the author's libel.

The **proceedings** must be commenced, if the defamation be oral, within two years, and if written, within six years, and in England are commenced by writ for damages in the High Court of Justice. In Scotland the proceedings are taken in the Superior Courts, and in Ireland in the Supreme Court or Civil Bill Court.

In any part of the United Kingdom the libelled medical man may, either in addition to, or in substitution for, the above proceedings, obtain an injunction (obtained from the High Court in England, the Exchequer Court in Scotland, and the Supreme or Civil Bill Court in Ireland) to restrain the further publication of the libel if the case requires it, as where it is proved that the statements continued to be published are untrue, and hurt the plaintiff in his profession.

As in all these cases the proceedings are technical in the extreme, the medical man cannot be recom-

mended to prosecute, nor, should he be defendant, to defend, without legal assistance.

Certain writers detail the law of copyright as applicable to medical men in respect of their writings, lectures, etc.; but it does not appear to the authors that the law of copyright would be any more incidental to the practice of a medical man than to that of any other British subject, and if one branch of law not peculiar to the profession be included, there would appear to be no logical reason for excluding the whole civil and criminal code. For similar reasons other points which are not of essentially professional interest are omitted from this volume. The cases of partnership and employment of assistants are, however, thought worthy of mention in detail, on account of the frequency with which they occur, and the peculiar features they often take in connection with medical men.

To Form the Relationship of Partners

does not necessarily require a deed, nor in many cases even a written agreement, but it is always desirable to have the conditions of partnership reduced to writing, and that by skilled lawyers, as by these means much subsequent trouble may be saved. A partnership agreement, without premium paid by one to the other, requires a stamp duty of 6d., which may be adhesive, if properly cancelled at time of signature, by the first person signing his name, the date of such signature being written across it; otherwise the stamp must be impressed at Somerset House, or the local Inland Revenue department or post-office. For stamps where

a premium is paid, see 'Purchase of Practice or Partnership' on p. 82.

Partners' Shares.—If nothing is arranged as to shares of profits and losses, the partners will share and have to pay equally. If share of profits be alone mentioned, the losses will, in the absence of special stipulation, be borne in the same proportion.

Partners' Powers.—In the absence of special agreement upon any particular point, the powers of a partner are—

(1) To bind his partner for all acts done or contracts entered into within the ordinary scope of his duties, whether the partner be 'sleeping' or nominal (*i.e.*, name alone appearing in the partnership; without any accruing benefit), or working. Thus one partner may be sued for the malapraxis of the other, if it be not malicious, and the first partner has not either knowingly taken the benefit of it, nor confirmed it in any other way. So, also, a contract by one partner for a supply of drugs or instruments to or by the firm binds the other without his consent, but not a bill of exchange accepted or drawn by one partner without the authority of the other in the name of the firm.

(2) To receive¹ and pay debts due to and from the partnership.²

(3) To carry on the partnership, profession, or practice without interference after the death of a

¹ If one of two or more partners be made bankrupt, the solvent partner or partners can give receipts for debts due to the firm.

² The recovery at law by partners of debts is treated above, p. 69.

partner, subject to any special agreement as to payment to the deceased's widow or personal representative, or, failing any such, subject to the duty of accounting to the representative for the deceased's *saleable* share of the practice and the profits earned up to the decease.

(4) To expel¹ his partner for gross breach of duty (see below, 'Partners' Duties'), in accordance with a proper clause to this effect in the partnership agreement.

Partners' Duties.—In the absence of special agreement, the duties of a partner are, *inter alia*—

(1) To account for all partnership moneys and goods received by him. (Gifts made by a 'grateful patient' to one of two partners should be only retained by the one partner as his own property with the full knowledge and concurrence of the other, to avoid suspicion.)

(2) To show 'reasonable skill.'²

(3) To conduct himself respectably, and to be guilty of no professional misconduct.

A Dissolution of Partnership

may take place in four ways :

(1) If a partnership at will (*i.e.*, no term specified), then at the will of a partner by due notices to the other.

¹ If there is no such clause in the agreement there is no such right. The partner's remedy is an action for dissolution or accounts. See next page. Every well-drawn agreement should, however, contain the clause, and it must be acted upon literally and *bonâ fide*.

² See above, p. 58.

(2) In accordance with the terms of the partnership agreement, verbal or written.

(3) Upon the death, bankruptcy,¹ or conviction for felony (but not the insanity) of a partner, or execution issued upon the partnership assets for the private debts of the partner. This is an *ipso facto* dissolution of the *whole firm*.

(4) By decree of the Court of Chancery or County Courts in England, the Superior Courts of Scotland, and the Supreme or Civil Bill Courts in Ireland.

The grounds for applying for a decree would be habitual misbehaviour of a partner, or breach of 'duties,' or his insanity, or the impossibility of the partnership continuing satisfactorily.

In all cases of dissolution provision should be made, if possible, as to the future share or shares of the late partners, and the places where they are respectively to be at liberty to practise; otherwise there would be nothing to prevent an unseemly strife and scramble between the late partners for the patients of the late firm.

The partners should also arrange for notices of the dissolution (stating who will receive and pay debts²) to be sent to all patients and others with whom they have dealt as debtors or creditors, and should insert a notice in the *London Gazette*. The partnership name may, in the absence of special agreement, but

¹ See below, 'Actions between Partners,' as to one partner making another bankrupt.

² As each partner is liable, even after dissolution, for partnership debts contracted before dissolution, care should be taken to *secure* payment by the partner taking the onus of the debts.

should not as a rule, be used by either ; for persons not having notice of the dissolution might sue a 'medical man' for goods delivered to his late partner in the name of the firm if the firm's name still continues to be used by such former partner with the 'medical man's' consent.

As actions between partners, arising out of the partnership transactions, cannot, as a general rule, be prosecuted, except on an account¹ which has been made and agreed between them showing a money balance due from one to the other, it is essential to have no outstanding debts between partners on their entering into partnership. Dissolution, of course, enables either to sue the other, but as long as the partnership exists no legal remedy, arising as above mentioned, can be sought by one partner against the other except by 'decree for dissolution' as above mentioned.

A petition in bankruptcy may be presented by one partner against the other only in the same event as an action (*i.e.*, for account agreed).

In cases of partnership the

Purchase of a Partnership Share

is a frequent occurrence, and similarly frequent is the

Purchase of a Practice.

Both of these may be conveniently considered to-

¹ The proceedings could, in this event, be taken in the personal name of the one partner against the other in his personal name as by a medical man for the recovery of debts. (See next chapter.)

gether. As an agreement in writing¹ for either of these purposes must now be stamped as fully as though it were a deed for the purpose of passing goodwill, book-debts, etc., there is no sufficient reason to dispense with a deed, and the assistance of an *independent solicitor* should always be secured by the intending partner or purchaser.

The stamp-duty upon such an agreement or deed will be, where the premium or purchase-money does not exceed £5, 6d. ; £10, 1s. ; £25, 2s. 6d. ; £50, 5s. ; and so on in progressive duties of 2s. 6d. for every £25 or part up to £300, and 5s. for every £50 or part beyond £300.²

The seller should take care to make no misrepresentation either by suggestion or suppression ; otherwise the purchaser may by suit of law rescind the agreement and recover his premium with costs or damages. If the purchaser, however, finds out any such fraud, and continues the negotiations or carries on the partnership, he is taken to have condoned it.

The seller should also, if he be selling only a share, take care to have the premium paid *in cash* before signature of the deed or agreement, or provide for its

¹ Writing is not necessary to create a binding contract for the sale of a share or a practice ; but if there be any stock or furniture above £10, or book debts, writing is necessary. See also above, p. 68, as to contracts which have to be in writing.

² If the deed or agreement is, as it should be, executed in duplicate, one part only need be stamped with the full duty, and the other with a 5s. stamp, or the amount of the full duty if that be less than 5s., and if the two documents are left at the stamping office for 'denoting,' each part will be complete in itself, as against the person signing it.

payment by the guarantee of some substantial third person.¹

If the seller be one of a partnership, in the absence of special contract dispensing with his partner's consent, he must first obtain it; and the same remark applies where one of two or more partners introduces a stranger without premium.

It seems very doubtful whether a contract for sale of a medical practice will be enforced by decree of court. The surer remedy is an action for damages for breach of contract.

The relations of medical men to their

Assistants,

registered or unregistered, require careful notice.

It is not absolutely necessary, in the case of taking an *apprentice*, for the agreement between the principal and his assistant to be in writing, but it is better to reduce the terms to writing to avoid subsequent complications. Where the assistant's salary includes payment by commission or by share of profits, the assistance of a skilled lawyer should be procured to prevent any doubts of the existence of a partnership—at least, so far as third parties are concerned. Even though the document expressly deny that a partnership is intended, if not clearly drawn the relation of partners may be inferred. As a rule, payment to an assistant of a share of *gross* profits does not constitute him a partner so far as third parties are concerned, whilst the payment of a share of *net* profits does.

¹ See p. 82, 'Actions between Partners.'

The agreement requires a 6d. stamp, as in the case of partnership agreements, and if under seal a 10s. stamp. If a premium be paid the principal, then, whether the agreement be under hand only or seal, the stamp-duty must be at the rate of 5s. for every £5 or part of £5. The document is void if antedated, as for the purpose of pretending longer service.

As a rule assistants need not be 'qualified' except in the following cases :

(1) A practitioner keeping open surgery¹ for the sale or compounding of poisons² must not employ an assistant in such duties unless the assistant is at least registered as a 'pharmaceutical chemist' or 'chemist and druggist.'³

(2) An apothecary's assistant, unless confined to the principal's house, must have received a certificate from one or other of the apothecaries' societies, otherwise he is liable to a fine of £5 per offence.

For the

Contracts, Acts and Defaults

of an assistant within the ordinary scope of his duties (unless maliciously committed and the principal has not knowingly confirmed them) the principal is responsible.

Payment of moneys to an unauthorised assistant

¹ No medical practitioner, unregistered as such before August 11th, 1869, may now keep an open surgery for this purpose, unless registered as an apothecary, under a fine of £5 for every offence.

² A list of poisons is given p. 115.

³ Any practitioner may employ an unqualified assistant to make up medicines for his, the practitioner's, patients, according to his prescription, although they involve the use of poisons.

does not release a patient or other debtor if the assistant fail to hand the same over to his principal, but anything amounting to an authorisation, such as an acquiescence to the patient's knowledge, by the principal in past receipts by the assistant would protect the patient although the money did not reach the principal.

The principal for his own protection *should* always, and to enable him to recover *must* in most cases, exercise

Supervision¹

over his assistant. If he exercises such supervision as will enable him to have a knowledge of the case and its treatment, he could recover for his assistant's services, but not otherwise. If his assistant be unregistered, and the principal not within the above rule, the services of the assistant and the medicines supplied by him could not be recovered.²

For the same reason a *locum tenens* must be a registered medical man, otherwise the practitioner could not recover. But an unregistered assistant may during the short absence of his principal carry on the practice if the essential rule as to supervision is not broken.

As to recovery of salary by an assistant, he has usually the same rights, whether registered or not, as any other agent or employé, but an unregistered *locum tenens* cannot recover payment of salary. On

¹ Supervision does not necessarily mean physical attendance by the principal upon the patient, though this is generally a good test whether the principal has exercised proper supervision.

² See above, p. 70, as to cases where assistants can sue.

the other hand, a registered assistant to an unregistered medical man may recover his salary.¹ Failure to perform his duties satisfactorily, or according to directions, is ground for reduction or non-payment of salary, according as the benefit accruing to the principal is reduced or entirely absent.

The **determination of employment** arises :

(1) By agreement of the parties either prearranged or otherwise.

(2) By the death or lunacy of either party.

(3) By the bankruptcy of the principal.

(4) By dismissal² by the principal for good grounds.³

(5) By judgment of a court of law, which is rarely invoked.

The determination of employment under head (1) can only take place at the expiration of the term originally agreed upon, except with the other party's consent. If no time has been specified, the hiring is deemed to have been for one year, and so on from

¹ See p. 70 (note) as to dishonest collusion between assistant and unregistered principal.

² An apprentice may not be dismissed except under special powers in the deed or agreement. The principal's remedy is by action in damages for breach of contract.

³ Good grounds are : 1, gross misconduct of the assistant ; 2, gross disobedience of his principal's *lawful* orders ; 3, gross negligence ; 4, continued disregard of the terms of his employment ; 5, physical or mental incapacity, not of a temporary nature ; 6, the holding himself out as a partner by the assistant without principal's consent ; 7, practising professionally upon his own account without the like consent.

The orders under second head must be *lawful* ; if unlawful, *i.e.*, forbidden or not permitted by law, the assistant may refuse without fear of consequences. If he performed them he would have no right of indemnity against his employer, unless he thought the act was in itself lawful. See further as to this, p. 91 (note).

year to year, determinable at three months' notice expiring with the end of the first or any subsequent year. If the salary be payable otherwise than quarterly, *i.e.*, monthly or weekly, then in the absence of special contract the same rule applies, but either party can determine at a month's or week's notice as the case may be. If the employment be determined without the necessary notice, the party breaking the contract is liable to be sued in damages by the party aggrieved. If, however, it be the principal who thus breaks the contract, he is not liable if he tender the assistant an amount of salary equal to the amount he would have earned had he received his proper notice. Thus, where a quarter's notice has to be given, to expire on the last day of a year of employment, the principal may safely determine the employment (without having any special grounds for dismissal) at any date *within* the last three months of the current year upon tendering three months' salary from that day; but if a new year has commenced to run he cannot thus get rid of his assistant without paying him his salary to the end of the current year. If it be the assistant who leaves without giving sufficient notice, not only may he be sued in damages, but he loses all right to the salary for the broken period from the last date of regular payment. If it be intended that the notice may expire at any time *within* a complete year, this should be expressly stated at engagement.

Under the second and third heads the assistant or his representative is only entitled to a proportionate part of his salary to the date of the death, lunacy or bankruptcy.

Under the fourth head he is only entitled to have all salary already accrued due and unpaid at the date of dismissal, not such as was accruing, *i.e.*, since the last date fixed for regular payment.

It is worthy of note that the principal

Need not Assign the Good Ground

for dismissal under the fourth head, and may give another reason with safety if he has such good ground in fact.

As cases frequently arise where

Assistants set up for Themselves

after dismissal or leaving the employer, reasonable provisions should be made either in the original agreement or on the assistant leaving employment, to prevent the assistant from damaging the principal's practice. In the absence of special contract, assistants have, after parting from their principals, ample rights of setting up for themselves. The protection generally considered sufficient is a bond by the assistant, and, if possible, third parties with the principal, binding the assistant under a fixed penalty not to act during his lifetime for the principal's patients, or at any rate solicit their custom, nor to practise within a certain radius of the place where the principal is practising.¹ Especial care must be taken

¹ An agreement not to practise made by a qualified assistant with an unqualified principal *who practises himself*, is bad, though it would appear that if the unqualified principal leaves everything to his assistant the bond may be good.

An assistant who enters into such a bond with a partnership may be sued by one of the partners after dissolution, if the other partner employs the assistant within the proscribed limit.

not to overshoot the mark. The radius must not be excessive, only what is reasonably necessary to afford the principal protection. If excessive in this respect the bond is worthless. Three miles radius of a city,¹ five miles of a suburb, ten miles of a country town, are not excessive. But a hundred miles is excessive in the case of a dentist, although twenty miles in the country has not been thought excessive in the case of a surgeon.

A principal is often asked to give a **character or testimonial** to a leaving assistant, but in the absence of special contract an assistant cannot demand this as of right. If a principal, without malice and with ordinary care, states his opinion of the assistant orally or in writing, he is not responsible for any damage which may accrue to third parties or the assistant. He must not, however, state matters of surmise as matters of fact, or make reckless statements, as malice would be inferred. If he gives the assistant a better character than he knows him to deserve, the principal may be actionable in damages to the persons damaged, and if he learns anything subsequently which alters his opinion, he must state it to the person to whom he gave the previous information, or to any person who, to his knowledge, has the character for perusal.

As to the

Care for his Assistant

which a principal must display, he must take reasonable

¹ Terms such as London, Canterbury, Edinburgh, Dublin, only mean the districts legally known as such, *i.e.*, the City of London, etc., not those popularly known as such, and including, of course, a much wider area.

care for his safety, and will be liable in damages to him for neglecting to protect him against any dangers known by the principal, or which occur through the principal's neglect; on the other hand, if the principal show reasonable care in selecting employés and warding off dangers, he is not responsible for injuries caused by other employés or dangers to his assistant.

For the same reason a principal cannot command an assistant to do anything not within the ordinary duties of an assistant which may result in bodily injury to the assistant.¹ Disobedience of such commands is not good excuse for dismissal.

It is not, however, a principal's duty to find medical attendance for his assistant except under special contract. Apprentices are on a different footing. See above, p. 71.

The **duties of an assistant** may be gathered from the foregoing remarks upon the determination of employment, and especially the note 4 on p. 87 as to grounds for dismissal. In connection with this subject it should be borne in mind that gross malapraxis on the assistant's part, resulting in the death of a patient, is not only ground for dismissal, but also criminal prosecution by the principal.

¹ The case of a principal desiring his assistant to attend an infectious or dangerous case is not within this rule, as it is one of the duties of an assistant to do so.

CHAPTER V.

RECOVERY OF CHARGES.¹

THE following are the methods provided *in England* for the recovery of charges :

A. If the Amount does not exceed £2.

The medical man has to issue a plaint in the proper County Court.² He must procure the necessary form called 'præcipe' at the County Court office, fill up the blanks according to the directions on the præcipe, putting opposite the words 'Nature of Claim' 'professional fees for attendance,' or 'medicine,' or 'surgery,' or 'dentistry,' or 'drugs,' as the case may be, and adding the *amount* claimed. He must fill in against the words 'Cost of Plaint' the proper fee, that is 1s. for every £ or fraction of a £, and an extra 1s. if more than three defendants are sued in one plaint. The form and fee must then be handed³ to the clerk,

¹ As to persons to sue and be sued, see pp. 69-71.

² If there be any difficulty, the County Court clerk of the district where the medical man resides will offer help.

³ If the medical man reside at a distance from the County Court, he may save himself trouble of personal attendance by following these directions: (1) Write to the 'Registrar of the County Court,' where the summons is to be issued, with his own

who will issue, and cause to be served upon the defendant, the summons, handing the 'medical man,' now called the plaintiff, a 'plaint note,' indicating the time and place of trial.

At the trial the plaintiff must be prepared to prove¹ :

(1) That he is a registered medical man in the capacity in which he claims.²

(2) That the debt was incurred by the person summoned.

(3) That the claim is reasonable.

(4) That it has not been paid ; and, if the defendant has given due notice of a special defence,

(5) That the defendant has not the defence he claims.

The **Proof of No. 1** is easy if the medical man be on the printed Medical 'Register,' by reference to the authorised copy³ in the court (or, if the plaintiff be a pharmaceutical chemist or chemist and druggist, by an authorised copy of the 'Chemists' Register'). If he is not in the current edition of the 'Register' (or 'Chemists' Register'), he should obtain from the Branch Registrar (or Chemists' Registrar) a certificate that he is actually registered, at the time he pays his registration fee.

Christian name or names, and surname and address in full, the defendant's surname and his full address, and a *short* statement showing the nature and amount of the debt. (2) At the same time send a post-office order or postal order for the amount of the fees. (3) Enclose a stamped envelope addressed to himself. The envelope, sending all to 'the registrar,' need *not* be stamped.

¹ See below, part ii., chap. iii., as to chemists.

² See above, p. 67, as to the date of registration.

³ The Queen's printers, or other printers authorised by the 'General Council,' may alone print.

Proof of No. 2 rests upon the circumstances of the case. Pp. 71-73 require careful perusal. An assistant's evidence, if corroborative, is desirable. The items may be disputed one by one, and the medical man should be prepared on the oath of himself or his assistant to prove them. The plaintiff's books (day, ledger or diary) may and should be brought to the court, for though they are not evidence in themselves, they may be used by leave of the judge *as refreshers of the memory*.

Proof of No. 3 would in ordinary cases be sufficiently furnished by the facts of the case and the judge's personal knowledge of such matters. If there is any fear of dispute on account of excess, the attendance of a disinterested registered medical man of the same degree should be procured as witness.¹ But this is rarely if ever necessary in cases of such small import. If, however, upon the trial such a witness has not been provided, leave should be obtained by the plaintiff of the judge to adjourn for the purpose of providing the witness.

As to **Proof of No. 4**, the best evidence is the oath of the plaintiff, and, if he has one, his assistant, that the money has not been paid. If the defendant insists that he has paid the debt, he should be required to produce a receipt by the plaintiff or his *authorised*² agent. If the defendant cannot do so, this fact will weigh heavily against him with the judge.

For **Proof of No. 5** each case must rest upon its

¹ As to procuring the attendance of witnesses, see p. 97.

² As to receipts by unauthorised persons, see p. 85.

own merits, and if the plaintiff is not prepared with rebutting evidence to the special defence, he should ask the judge to adjourn the case for him to procure it.

Before the trial, and upon the day fixed for same, the plaintiff must pay a **Hearing Fee** of 2s. for every £ or fraction claimed as *debt* to the County Court clerk. For this purpose the plaint-note must be produced and a receipt entered thereon by the clerk. If the defendant, as frequently happens, admits his indebtedness, half of this fee must be repaid to the plaintiff. The question then becomes one of the means of the defendant to pay the whole debt at once or by instalments.¹

If the plaintiff obtain **Judgment**, he may, by paying the County Court clerk the proper fee (that is, 1s. 6d. for every £ or fraction of a £ of the *debt and costs* recovered),² and upon producing the plaint-note for the receipt, cause execution to issue at once, and have a sufficient quantity of the defendant's goods sold to satisfy the debt, costs and costs of execution. The costs should be not only those entered on the plaint-note, but also the fees for witnesses' attendance and the plaintiff's travelling expenses at 1s. per mile from his residence to the court for the trial. *These he should expressly apply for at the trial.*

Should the plaintiff agree *or* the judge see fit, the judge may, instead of making an order for immediate

¹ See under 'Judgment Summons' as to proof of a debtor's means, pp. 96 and 97.

² The bailiff's fees for holding possession are, in addition, 6d. per £, or fraction, per diem up to five days.

payment, or a *short order* (i.e., payment of the whole sum within fourteen days), order payment by **Instalments** of so much a month.¹ If the instalments are *duly* paid the plaintiff must accept them, but upon failure of any one payment the whole of the remaining debt and costs becomes due, and may be recovered by execution, as above mentioned (see 'Judgment').

Great care should be taken to enquire at the County Court whether in fact any instalment is overdue before proceeding to execution.

If the defendant does not pay and has no goods upon which execution can issue (upon which point the County Court bailiff can give valuable advice), the plaintiff may, by applying to the County Court clerk, and producing the plaint-note, have a **Judgment Summons**² issued, for which he will have to pay a fee of 3d. for every £ or fraction then payable of debt and costs, and a varying additional sum of 6d. or 1s., according as the sum payable is less or more than £1.

The summons comes on for hearing upon the day named upon the plaint-note by the clerk, and the plaintiff must again attend and prove that the defendant has had the means since judgment of paying the whole or part of the debt, or the instalment or instalments overdue.

Proof of means is not easy, but any evidence the

¹ If no period mentioned, or the word month be not qualified, it means in this sense a *lunar* month.

² A third method of obtaining payment, namely, by attaching debts due, or accruing due, to the defendant by third persons, is not specified, as it requires some technical skill to prevent costs being thrown away.

plaintiff has of the wages earned by the defendant or the state in which he lives will be enough. Hearsay evidence (*i.e.*, a statement by the plaintiff of what a third person told him, etc.) is of no use. As, however, direct evidence is difficult to obtain, the judge often assists by cross-questioning the defendant upon the plaintiff's statements or beliefs.

If satisfied, the judge makes an order committing the defendant to prison for so many days (generally twenty-one), either at once or unless the amount be paid in so many days. This measure seldom fails to produce the money, but it should be remembered if the defendant elects to go to prison that he does *not* discharge his debt by so doing.

To procure a **Witness's Attendance**, which, as often happens, he or she will not give without a summons, the plaintiff must attend or send to the County Court office and require a 'subpœna' to be issued. The fee is one shilling per witness, whose full names and address must be inserted in the subpœna. If he pleases, the plaintiff may personally serve the subpœna, but it had better be left to the County Court bailiff. 'Conduct money' should be given to the witness or the bailiff, as the case may be, sufficient to pay the witness's travelling expenses to and from the court. A witness can demand his fee for attendance when at the court and before being sworn.¹ As to witnesses' scale of fees, see the scale allowed by law at the County Court office and Appendix, Table 'C.' If documents or books

¹ See above, p. 39.

have to be produced by the witness they should be specified in the subpoena.

B. If the amount exceeds £2, but does not exceed £5.

The plaintiff must proceed precisely as in the case of a claim not exceeding £2, with the following exceptions :

(1) With the præcipe the plaintiff must deliver, or, if at a distance, send by post, to the County Court registrar or other official two sheets of foolscap, each containing in the same form particulars of his claim, with dates and items, and one additional copy for each defendant beyond the first.¹

The particulars must be full, or the defendant may claim further particulars at the plaintiff's expense. The particulars furnished in an ordinary professional account are *not* sufficient unless a full account has been already delivered.

In this case *only* the particulars might take the following form :

PARTICULARS OF CLAIM.

The following are the particulars of the plaintiff's claim :

8 Dec., 1888,	Fees for professional attend-
to	ance by plaintiff on defendant
4 Jan., 1889.	(and medicines supplied by
	plaintiff to defendant ²) be-

¹ To prevent mistakes at the trial, the plaintiff should retain a copy for himself.

² Omit, if necessary, the words in brackets.

tween these dates, full particulars of which have been delivered by the plaintiff to defendant - - - £

The above form could be adopted for medical practitioners and dentists, while for chemists the form would commence at the word 'medicines,' and be similarly adaptable.

In other cases, however, which are by far the most frequent with medical practitioners and dentists, no previous detailed account has been delivered. In these cases the following forms are capable of easy adaptation.

(For Medical Practitioners.)

PARTICULARS OF CLAIM.

The following are the particulars of the plaintiff's claim :

	£	s.	d.
8 Dec., 1888. Professional attendance by plaintiff upon defendant (<i>or</i> defendant's son, wife, servant, as the case may be) for diphtheria - - -	0	5	0
Ditto. 8-oz. bottle medicine prescribed and supplied by plaintiff to defendant -	0	2	0
9 Dec., 1888. Two attendances as above -	0	10	0
10 Dec., 1888. Two attendances as above -	0	10	0

	£	s.	d.
10 Dec., 1888. 6-oz. bottle medicine pre-			
scribed and supplied as			
above - - - -	0	1	6
Etc., etc.			
Total -	£		

(*For Dentists.*¹)

(The formal parts as above.)

	£	s.	d.
4 Jan., 1889. Attendance by plaintiff upon			
defendant (<i>or</i> defendant's			
son, etc.), extracting three			
teeth at 5s. per tooth -	0	15	0
Paid chloroformist -	1	11	6
5 Jan., 1889. Attendance as above, stopping			
two teeth at 10s. -	1	0	0
8-oz. bottle dentifrice -	0	1	6
7 Jan., 1889. Attendance as above, taking			
cast of mouth - - -	0	5	0
Three artificial teeth at 10s. -	1	10	0
14 Jan., 1889. Attendance as above, fitting			
same - - - -	0	5	0
Etc., etc.			
Total -	£		

2. The fee for issuing the summons is increased by 1s. Thus the fee for a claim of £4 12s. against one, two or three defendants is 6s.

¹ This is introduced here and referred to from part ii., chap. i., for the sake of brevity.

As to trial, hearing fee, judgment, etc., see above, pp. 92-97.

C. If the amount exceeds £5 and does not exceed £20.

The medical man has the choice of two courses : (1) Either he may proceed as in the last case, or (2) he may issue a **Default Summons**,¹ which he obtains as follows : So far as regards attendance at or sending to the County Court the procedure is similar to that above detailed, but in addition he has to make an affidavit in a prescribed form, which he may obtain from the County Court. He must fill up the blanks and shortly state how the cause of action arose within the district where he desires to issue the summons. The law upon this point is somewhat technical, but the County Court clerk will afford advice and assistance. To make the affidavit, after filling up and signing his name in the right-hand bottom corner, he must attend at the court or before a Commissioner for Oaths, and then file it at the court. A 2s. fee is payable at the court for filing, and a fee of 1s. 6d. to a Commissioner for taking the affidavit.

This affidavit has to be lodged at or sent to the court by post with the other papers, as in case B. The fees are also at the same rate, except that if the bailiff serve the summons an additional fee of 1s. is payable. Although the plaintiff may, if he please, serve a default summons, the shilling is as a rule well

¹ He might issue a default summons for a sum above £2 and under £5, but he has to get leave of the registrar, and the proceeding is somewhat technical.

spent. If the defendant does not within eight days after service signify his intention of disputing the claim (which will be notified by the County Court to the plaintiff), the plaintiff may proceed to judgment on payment of half 'hearing fee,' and, if he pleases, to execution and judgment summons, as in the ordinary case of obtaining judgment (see A).

If, however, a notice is given within the eight days, notice of a day of trial is sent to both parties by the officials, and upon such day the trial proceeds, as in case A, pp. 92-97.

D. If the amount claimed exceeds £20 and does not exceed £50.

The medical man may proceed (1) either by one of the two methods¹ indicated in C, or (2) he may issue a writ in the High Court of Justice. As this last proceeding involves a knowledge of practice and procedure which could not possibly be indicated in a book of these dimensions, or, if indicated, adequately learnt by the reader, the medical man who selects the quick and surer remedy to be obtained through the High Court should consult a respectable solicitor. If he selects the County Court he must remember that all fees where more than £20 is claimed are reckoned as though the claim were only £20. Thus, the fee on

¹ The judge may not, unless the plaintiff agree, give judgment for sums above £20 in any other way but for immediate payment, or on *short order*. But on a judgment summons above this amount coming before him, he may make such terms as to instalments as he sees fit.

an ordinary summons (*i.e.*, not default) against three or less defendants where the claim is £37 would be £1 1s., the hearing-fee £2, and so on.

E. If the amount claimed exceeds £50.

The medical man must take proceedings in the High Court, as mentioned under case D, unless he is willing to abandon all his claim above £50, or the defendant agrees with him in the prescribed form to give the County Court jurisdiction.

PART II.



CHAPTER I.

DENTISTS.

The practice of dentistry has, of late years, been much improved, and the tests for proficiency in this important branch of surgery made more severe.

Definition.—By the term ‘dentist’ is implied a person *qualified*¹ to act as dentist, dental surgeon, or dental practitioner, and registered as such under the Act of 1878.

The registering body is the General Council,² through the branch registrars,³ who keep separate registers⁴ for the purpose. Dentists as such can neither elect nor be elected as representatives upon the Council.

Persons⁵ entitled to be registered as dentists⁶

¹ See below.

² See p. 11, *et seq.*

³ See p. 10.

⁴ See p. 10.

⁵ There is now no legal reason why females *may* not be registered, but colleges are not bound to examine them. See note 3, p. 14.

⁶ See page 106 as to Foreign or Colonial Dentists who may practise in the United Kingdom.

(unless there be sufficient cause¹ to the contrary), and to practise as such throughout the British Dominions,² are :

(1) A licentiate of dental surgery, or licentiate of dentistry of any college or society capable of returning a member for the General Council.³

(2) Any person *bonâ-fide* engaged in and practising as a dentist or dental surgeon on or before 22nd July, 1878, either solely as such, or jointly with a medical or surgical practice or pharmacy.

The mode of registration is the same as in the case of qualified medical men (see p. 17), the registration fee being £5 for original, and 5s. for added qualifications.⁴

The following dentists may be struck off the register by the General Council :

(1) If convicted of any crime or offence in the British dominions or elsewhere, which, if committed in England, would amount to felony or misdemeanour.

(2) If found guilty by the General Council⁵ of infamous or disgraceful professional conduct.⁶

¹ If the applicant would be liable to be struck off as soon as registered, for cases of which see next page, he cannot claim to be registered.

² Dentists registered *for the first time* since 30th June, 1887, can practise outside the United Kingdom, subject to the local laws of the colony or possession where they desire to practise.

³ The degree or title is bestowed upon examination by a college of surgeons.

⁴ The forms to be filled up are those in Appendix H and I respectively.

⁵ The General Council has a similar discretion as in the case of qualified medical practitioners. See note 1, p. 19.

⁶ See note 2, p. 19, for instances.

(3) Deceased persons.

(4) Dentists who have ceased to practise. This can not only take place where the dentist himself signifies his consent to being struck off, but also where certain prescribed three-monthly notices shall have been sent to the dentist's last registered place of residence, and are unanswered or returned by the post-office authorities through the Dead-Letter Office. Hence it is highly important for a dentist to signify change of address to the Branch Registrar by whom he was registered.

(5) Persons whose registration has been obtained fraudulently or incorrectly.¹

The method of striking off and the method of compulsory registration or restoration to register are the same as in the case of qualified medical practitioners.²

The relations of a dentist as such to the college of which he may be a diplomat other than those above mentioned are unimportant, as he has no vote in the business of the college nor in the General Council.

The Medical Act of 1886 has provided provisions for the registration of persons holding

Colonial or Foreign Diplomas.

A person having a certificate or diploma granted in any part of her Majesty's dominions, outside the United Kingdom, which diploma or certificate is

¹ This case would appear to come under the second head.

² See pp. 17 and 20 ; and see also note 3, p. 19.

recognised by the General Council as affording satisfactory proof of the holder's skill in **dentistry and dental surgery**, and entitling the holder to practise as a dentist in such dominion, shall be entitled to registration as a dentist, and when registered to practise as 'a dentist,' upon complying with the following conditions, *i.e.* :

(1) Producing the diploma to the Branch Registrar.

(2) Showing that he is of good character.

(3) Showing that he is not domiciled in the United Kingdom, *or*, though so domiciled, has practised for more than ten years outside the United Kingdom, *or* had been practising for ten years before the 22nd July, 1878, anywhere ; and

(4) Paying the registration fee of £5.

He has a similar appeal from the refusal of the General Council to register as the Colonial practitioner (p. 23).

A person having a diploma or certificate granted in a *foreign country*,¹ and recognised by the General Council as a guarantee of skill, and entitling the holder **to practise as a dentist** in the place where granted, shall be entitled to registration, and upon registration to practise as 'a dentist,' upon his complying with conditions Nos. (1), (2) and (4) above, and either showing that he is not a British subject, *or*, though a British subject, that he has practised for more than ten years outside the United Kingdom, *or*

¹ Those recognised at present are specified in Appendix, Table G.

had been practising anywhere for ten years before the 22nd July, 1878.

He has a similar appeal as a Colonial dentist (see last page).

With regard to his

Public Relations,

a dentist is in many respects in a similar position to a medical man (see part i., chap. iii.). That is,

(1) He is exempt, if in practice, from serving upon juries, inquests, corporate and other offices, or in the militia.¹

(2) With regard to criminal offences, he occupies a position analogous to the medical man,² and must not abuse the trust placed in him by his patients.³

(3) The rules laid down as to medical witnesses⁴ relate, though in a less degree, to dentists, whose fees will be found in Appendix C.

(4) In so far as dentists may supply medicines or drugs in dental cases, they must have regard to the provisions dealing with Poisons and Adulteration (p. 56).

¹ See p. 33, where the point is fully treated.

² See p. 37.

³ In view of the increasing number of cases where dentists appear as defendants in criminal prosecutions for assault by lady patients, to whom they have administered gas, ether, or some other anæsthetic, no dentist should operate under anæsthetic without a third person being present, who should, to avoid the dentist being responsible for a death under anæsthetic, be an experienced chloroformist.

⁴ P. 38, *et seq.*

With regard to his

Private Relations,

a dentist is in the same position as a qualified medical practitioner.¹

Special attention should be paid to the subject of

Contracts,²

as a dentist making artificial teeth to cost more than £10 for a patient must, according to a recent decision, comply with paragraph 3, p. 68.

As to

Recovery of Charges,

the dentist may recover for mechanical dentistry and for medicines supplied by him in dental cases, as well as for dental operations, if qualified to be registered at the time the services were rendered or goods supplied, and registered at or before the trial of the action.

What has been said in part i., chapter iv., of medical men with regard to the subjects of **defamation, partnership and assistants**, and the whole of chapter v., applies *mutatis mutandis* to dentists.

¹ See part i., chapters iv. and v., which may be read as though the word 'dentist' were substituted throughout for 'medical man.'

² See p. 68.

CHAPTER II.

CHEMISTS.

THERE are many important distinctions between the status, rights and duties of medical men and those of chemists.

Definition.—*Chemist*¹ throughout this work (unless the context does not admit of such a comprehensive definition) implies ‘a person who is qualified either as pharmaceutical chemist, pharmaceutist, pharmacist, chemist, or chemist and druggist, to supply drugs, chemicals, medicines and poisons,² *and registered* as such, for England or Scotland under the Pharmacy Act, 1852, or for Ireland under the Pharmacy Act, 1875.’

The registering body for English and Scotch chemists is the Pharmaceutical Society of Great Britain, incorporated by Royal Charter in 1843, and

¹ The distinction between pharmaceutical chemist, pharmaceutist, or pharmacist on the one hand, and chemist or chemist and druggist on the other, is one of degree, the former having to pass a more advanced examination than the latter. The former have certain powers in their societies which the latter do not possess, as hereinafter specified, otherwise their rights and duties are substantially the same.

² See p. 55 as to qualified medical practitioner who may supply medicines; also p. 109 as to dentists.

constituted by the Pharmacy Acts, 1852 and 1858, a perpetual corporation, with a council elected by the members and associates of the society, who are themselves respectively elected from the pharmaceutical chemists and chemists and druggists. The powers of the council include (*a*) the appointment of a 'Chemists' Registrar;' (*b*) registration of 'chemists;' (*c*) the holding and regulating of examinations of pharmacy and chemistry. Chemists and druggists, not exceeding seven, are eligible as such for the council, the remaining members of which have to be 'pharmaceutical chemists.'

For registration of chemists in Ireland the registering body is the **Pharmaceutical Society of Ireland**. This society, constituted by the Pharmacy Act, 1875, consists of a president, vice-president, council and members, of whom the first president, vice-president and council were appointed by the Act. One-third of the council goes out of office every year in rotation, and the president is elected by the members of the council, the council themselves being elected by the general body of the members and associates of the society. Pharmaceutical chemists are alone eligible for the 'council;' chemists and druggists are only eligible as associates, with power of voting at meetings of the whole society. This society has similar powers to the Pharmaceutical Society of Great Britain.

The following persons¹ are entitled to be regis-

¹ There is no legal reason why women should not be chemists, but the Pharmaceutical Societies are not bound to examine, nor can they be members of the councils.

tered¹ upon the '**Chemists' Register**' of Great Britain or Ireland, as the case may be, and, when so registered, to practise according to their qualifications throughout the British dominions :

A. Great Britain—

(1) Persons practising as 'chemists' before 31st July, 1868.

(2) Assistants of 'chemists' in active practice as such for three years prior to 3rd December, 1868.

(3) Persons examined and held qualified by the English Pharmaceutical Society as 'chemists.'

B. Ireland—

(1) The president, vice-president and members of the first council of the Irish Pharmaceutical Society.²

(2) A licentiate of Apothecaries' Hall, Dublin.²

(3) Persons examined by the Irish Pharmaceutical Society and held qualified to be 'chemists.'

The following **chemists may be struck off** the several Chemists' Registers, as the case may be :

A. Great Britain—

(1) Deceased persons.³

(2) On becoming registered⁴ as a qualified medical practitioner.⁵

¹ If a person would be liable to be struck off, as to which see next page, he is not entitled to be registered.

² These persons have all the privileges of pharmaceutical chemists. See preceding two pages.

³ The trustee, executor, or administrator of the deceased may carry on the business of the deceased for the benefit of the estate, with the actual assistance of a 'chemist.'

⁴ If a person be already registered as chemist, he must, before being registered as a qualified medical practitioner, have his name erased from the Chemists' Register.

⁵ But not as a dentist.

B. Ireland—

(1) Deceased persons.¹

(2) Persons convicted of an offence against the Pharmacy Act, 1875. Such offences include (a) obtaining registration by false representation; (b) practising medicine or surgery without necessary qualification.

(3) Persons who have 'ceased to practise,' *i.e.*, who have received the prescribed three-monthly notices, to the chemist's last registered address, to be sent by the Chemists' Registrar, such notices being unanswered or returned through the Dead-Letter Office.²

The method of **striking chemists off their register** is very similar to that adopted in the case of qualified medical practitioners (see p. 19). The authority to strike off is in all cases, with one exception, the Pharmaceutical Society of which the accused is a member or licensee. The exceptional case is that of a person being convicted of an offence against the Irish Pharmacy Act, 1875.³ In this case the authority is exercised by the Lord Lieutenant and the Privy Council.

The **process to enforce compulsory registration**, or restoration to the register, is the same as that prescribed for a qualified medical practitioner (see p. 20), the defendant being, of course, the Chemists' Registrar of Great Britain or Ireland, as the case may be.

¹ See note 3, p. 112.

² It is highly important that, on change of address, notification should be sent to the Chemists' Registrar, who originally registered the person so moving.

³ See last page.

‘Chemists’ have, however, an appeal in all cases from the society’s decree to the Privy Council.

So far as their **rights against their societies** are concerned, ‘chemists’ are in an analogous position to that of qualified medical practitioners (see p. 20).

With regard to their **public relations**, chemists are in many respects in the same position as medical men (see part i., chap. iii.), that is—

(1) They are exempt from serving upon juries, inquests, corporate or other offices, or in the militia.¹

(2) Occupying positions of trust towards their customers, they will receive severe punishment for abusing their trust.²

(3) The rules laid down as to medical witnesses concern chemists, though in a less degree.³ Their fees for attendance will be found in Appendix, Table C.

(4) Special care and attention should be shown to the provisions dealing with compounding of medicines according to British Pharmacopœia ; and adulteration, specified on p. 56 ; and the provisions relating to the sale of

POISONS.⁴

A person qualified to supply medicine incurs a penalty :

¹ See p. 33.

² See p. 37.

³ See p. 38.

⁴ The seller means the person who actually sells, or in whose establishment the sale takes place ; hence an unqualified person selling a poison with the name on the label of a ‘chemist’ who had nothing whatever to do with the shop, was convicted under the Pharmacy Act ; but it will be sufficient protection of a store or other establishment if there is a ‘chemist’ actively engaged in the drug department.

(1) If he sells any quantity of arsenic without first colouring the poison with 1 oz. of soot, or $\frac{1}{2}$ oz. of indigo per lb., unless in cases of sales above 10 lb. he is duly satisfied it is not wanted for agricultural purposes, and that such colouring would frustrate the lawful object for which it is required. The purchaser must be of mature age.

(2) If in the event of the sale of any poison¹ he does not place upon the poisonous packet or bottle a label with the name and address of the seller, and take down in a book kept for the purpose the date of sale, purpose for which required, address of the purchaser, and the quantity and the ingredients of the poison or poisonous compound, and label the packet

¹ Articles deemed poisons by Act of Parliament are as follows : *Arsenic and its preparations, prussic acid and its preparations, cyanides of potassium and all metallic cyanides, strychnine and its preparations, and all poisonous vegetable alkaloids and their salts, aconite and its preparations, emetic tartar, corrosive sublimate, cantharides, savin and its oil, ergot of rye and its preparations, atropine and vermin-killer containing any of the above poisons, oxalic acid, essential oil of almonds, opium, chloroform, belladonna, chloral hydrate, morphia* : Preparations of morphine, of cantharides and of corrosive sublimate, red oxide of or ammoniated mercury, vermin poison containing any of the above mentioned poisons not in italics.

Those in the above list in italics can only be sold to a person known to or introduced by a person himself or herself personally known to the seller. [This provision does not extend to wholesale dealers in the ordinary way of business or exporting, nor to dispensing chemists making up medicines from prescriptions, nor to a registered medical practitioner supplying medicines to patients qualified so to do.]

The list may be extended by the Pharmaceutical Society of Great Britain and the Royal College of Physicians of Ireland as to their respective districts.

or bottle with the word poison.¹ The purchaser has to sign the book, and so must his introducer, where an introducer is required.

With regard to his **private relations**, a 'chemist' is, with some exceptions, to be noted hereafter, in the same position as a qualified medical practitioner.²

Special attention should be paid to the subject of contracts,³ as a 'chemist' supplying *at one time* more than ten pounds' worth of goods to a customer must comply with paragraph 3, p. 68.

As to **recovery of debts**, 'chemists' are in the same position as 'qualified medical practitioners,' so far as regards necessity for registration and as to mal-practice.⁴

They can only recover for drugs, medicines or appliances—that is, goods—not for services rendered. If they prescribe or trench upon the peculiar prerogatives of a qualified medical practitioner, of whatever degree, they lay themselves open to prosecution (see part iii.).

They cannot recover for any medicine which should be compounded according to the British Pharmacopœia, if not so compounded, unless especially ordered by a

¹ The last formality is not required if the poison be made up from the prescription of a registered medical practitioner, and dispensed by a dispensing chemist duly registered or supplied by a registered medical practitioner qualified to sell.

² See part i., chapters iv. and v., which may be read, so far as the context permits, as though 'chemist' appeared therein instead of 'medical man,' and 'customer' instead of 'patient.'

³ See p. 68.

⁴ See p. 66.

physician¹ to be compounded in the manner actually adopted by the chemist.

What has been said in part i., chap. iv., as to the rights and duties of medical men with regard to defamation, partnership and assistants,² applies to chemists, *mutatis mutandis*.

¹ The decision, though limited to the case of a physician, would be doubtless extended to include cases where any qualified medical man had prescribed in a particular form.

² But see p. 122, note 2.

CHAPTER III.

MIDWIVES.

THE rights and duties of a 'medical man' possessing a registered qualification in midwifery have been already treated in the foregoing pages.¹

Formerly a licentiate in midwifery of the Royal College of Surgeons, England, might have been registered in the Medical 'Register' without possessing any other qualification. But since 1875 the English College has discontinued holding examinations, and in 1888 the examination for the licentiate was abolished for good and all.

Since the 30th June, 1887, no licentiate can claim to be registered *de novo* unless he has qualifications in medicine and surgery as well.²

If persons cannot, though certified as midwives, bring themselves within the provisions of the Medical Act, so as to procure registration, as mentioned in part i., chap. i., they **cannot procure registration** in any other way. They may, indeed, be considered as skilled unregis-

¹ See particularly p. 15, note 7, and p. 16, note 2.

² See above, p. 15, note 2.

tered persons.¹ But without some decision upon the point, it might mislead were we to state that want of registration deprives such a person of the common-law right to recover charges for which he has made a special contract, for a surgeon, though often, is not necessarily qualified in midwifery; and unless a case of midwifery involves surgical treatment, it cannot be called 'surgical,' nor the practitioner brought within the scope of the Medical Acts. Hence the better opinion would be that an unregistered person may practise midwifery and recover for charges. Nor is there any reason why certificated midwives should not hold themselves out as such. In certain actions or prosecutions, *i.e.*, for negligence, they might be more lightly treated than persons ignorant of midwifery holding themselves out as skilled. On the other hand, they might be more severely amerced or punished than ignorant persons *not* pretending to possess any qualification, *e.g.*, if they displayed gross ignorance of matters which, as certificated persons, they might be expected to know.² Certificates, signifying the skill and knowledge of the persons to whom granted, are given by the Obstetrical Society, London, the Royal College of Surgeons, Ireland, and various lying-in hospitals in Great Britain and Ireland.

¹ See p. 126.

² See further as to this, p. 126.

PART III.

UNREGISTERED PERSONS.

THE word 'unregistered' is used in preference to the word 'unqualified,' as being the more correct, the rights and duties of unregistered persons, whether qualified or not *for registration*, being practically the same.

(1) In his

Public Relations

the unregistered person is subject to certain disabilities ; not only has he none of the special privileges recorded in part i., chap. iii., as those belonging to registered medical men, but any person holding himself out¹ for his own profit as a 'physician,' 'surgeon,' 'apothecary,' 'medical graduate,' 'dentist,' or 'chemist,' or registered foreign or colonial practitioner² or dentist,³ or assuming any style or title implying registration, if he is not registered in the title which he assumes, or the qualification which he

¹ There must be a holding out, mere acquiescence in a style of address by patients, as 'doctor,' or the like, is insufficient to found a prosecution, except where he has made consequent attendances on his own account and for his own profit.

² See chap. ii. of part i.

³ See chap. i. of part ii.

holds out, such person is punishable by criminal prosecution.

It is no defence that the person is entitled to be registered, as that would be an evasion of the Registration Acts ; although, of course, such a person would be more lightly punished than a person not so entitled, as offending less against the public interests.

Persons not within the Rule.

A foreign or colonial dentist who does not hold himself out as *registered*, and is not ordinarily resident in the United Kingdom, is *not* within the rule or liable to a penalty for merely holding himself out as a dentist for profit,¹ though unregistered.

Nor is a person who has been registered as a dentist, but has ceased of his own accord to practise, and been thereby struck off the register.

Nor is a practitioner having an unregistered foreign diploma, who confines his practice entirely to a hospital for foreigners only.

Nor is an American M.D. who correctly calls himself M.D. of an American University.

Nor is a person holding a foreign diploma not recognised under the rules in chap. ii. of part i., who has called himself 'doctor' for some years before 1858.

Nor is a person who sells patent medicines (whether poisonous or not), and is *not* registered as a chemist.

¹ And see part i., chap. ii., as to registration of certain foreign and colonial dentists.

Persons within the Rule.

A person not registered as a qualified practitioner who proceeds to sea as a ship's surgeon *is* within the rule, the penalty being from £10 to £100.

So is a medical graduate registered as such only before 30th June, 1887, who compounds and supplies medicines, not merely prescribing them.¹

So is a medical graduate of a foreign university, not registered, who holds himself out under the title of M.D. simply.

So is a chemist who, in reply to a customer's enquiries for something to cure his ailment, prescribes, makes up and supplies a medicine. Mere recommendation and sale of a patent medicine does not appear to inculcate the seller.

So is a person who gives a certificate of insanity without having the necessary qualification.

(2) Any person other than a registered 'chemist' selling² *poisons*³ or medicines containing *poisons*, is liable to a penalty, but this does not extend to 'registered medical practitioners' who, being qualified, prescribe and dispense their own medicines,³ either personally or under supervision, to their patients;

¹ He is deemed to be unregistered *quâ* apothecary.

² The person selling means the actual seller *or* the person in whose shop the sale is made, provided he exercise personal supervision. So stores, if employing a registered 'chemist' (pharmaceutical or druggist), are not liable to the penalty, but an unqualified assistant to a chemist is liable to the penalty.

³ Poisons are indicated in the footnote, p. 115.

⁴ See 'Definitions,' p. 9, and note 5, p. 16.

nor to vendors¹ of patent medicines;² nor qualified veterinary surgeons treating animals under their care; nor wholesale dealers in poisons, in the ordinary way of their wholesale business. But as to the formalities to be observed by any of the above, see p. 115, as to sale of poisons.³

(3) Under an unrepealed Act of Henry VIII., any person practising *medicine* in the City of London, or within seven miles, without a license from the Royal College of Physicians, London, is liable to a penalty of £5 per month for so doing. Proceedings under this statute are very rare, and cannot now be taken against a qualified medical practitioner who is entitled to practise medicine, nor against an apothecary who has got his certificate, but is not registered, if he limits himself to prescribing and compounding.

Although the recognised bodies, *i.e.*, the General Council, or one or other of the Pharmaceutical Societies, should institute

Prosecutions

in the interest of the medical men or others whom they

¹ The statutes are drawn so that there is reasonable ground for stating this exception, even where the medicines contain poisons. But as patent medicines can be, and are, sold by grocers and others, it is evident that the Legislature should step in, and, to use a homely phrase, no longer be satisfied with stopping the spigot while the liquor runs away at the tap.

² Patent medicines are those which are made in accordance with letters patent granted in the United Kingdom, and do *not* include proprietary medicines or medicines merely bearing a Government stamp duty, and not prepared according to specifications by letters patent.

³ Wholesale dealers, for export or in usual way to retail dealers, are not bound to label the poison with their name and address.

represent, it is very unusual to find them taking very active steps, and consequently a number of societies have been formed whose objects, *inter alia*, are to institute prosecutions in the interest of their subscribing members.

Any person may institute the proceedings, except against unregistered persons practising as 'chemists,' or any persons committing any offence against the Pharmacy Act, such as irregular or improper sale of poisons, etc.; in which cases the Pharmaceutical Societies of Great Britain or Ireland respectively must prosecute, and are usually set in motion by information from some of their members.

The fines and penalties payable on conviction of persons holding themselves out as registered medical practitioners or dentists go to the General Council,¹ not to the prosecutor; and the fines payable on conviction of persons acting as pharmaceutical chemists or chemists and druggists in Great Britain, or offending against the English Pharmacy Act, go to the Pharmaceutical Society of Great Britain.

In offences, however, against the Irish Pharmacy Acts, one-third of the fines, in breaches of the law as to sale of poisons, may, and in other cases shall be

¹ In the case of proceedings against uncertificated persons for practising as apothecaries or their assistants, one-half goes to the informer and the other half, in England, to the Society of Apothecaries. If penalty above £5, then the process is in the name of the society by action at law. If under £5, then by proceedings before a justice of the peace or magistrate; and all proceedings must be brought within six months, and after twenty-one days' notice.

appropriated to the persons who set the law in motion, the balance going in the first case to the Lord-Lieutenant in his official capacity, and in the latter cases to the Irish Pharmaceutical Society.

The chief proceedings taken at the present day are by the Apothecaries' Society or Hall against chemists and others,¹ for infringing upon the apothecaries' functions of prescribing and supplying. The maximum penalty per offence is £20.

A penalty which the British Society of Apothecaries is especially interested to enforce is that for employment of an uncertificated assistant by an apothecary.²

In his

Private Rights and Duties

the unregistered person has not, of course, the peculiar privileges conferred by registration. Thus, he cannot legally enforce claims against patients or other persons for services rendered or goods supplied, even though he may have made a special contract and have effected a cure;³ nor can he recover from third persons who have guaranteed payment of his account, nor upon a bill, note or cheque given in payment. Where an

¹ The person proceeded against must produce his license, or show otherwise that he is entitled to act as an apothecary. The onus of disproof is not placed upon the shoulders of the prosecution until this is done, but no further evidence of identity is wanted *prima-facie* upon production of the license.

² The certificate is granted upon proof of (1) sufficient medical education; (2) full age of applicant (21 years); (3) that applicant is of good moral conduct. The penalty for a person acting as assistant without a certificate is £5. See also p. 85.

³ If an unregistered person practise as a 'chemist' he cannot legally recover for the goods supplied by him, but the burden of proof that he is unregistered is upon the defendant.

unregistered person is partner or assistant to a registered medical man, his rights have already been treated (pp. 69, 70 and 85).

An unregistered person seems to have the same right of immunity from defamation as registered medical practitioners, although the profession or practice in which he may be damaged cannot be considered in law as legally advantageous ; but if the words complained of impute want of registration or qualification to be registered, see above, p. 77.

In his

Private Duties towards his Patients,

an unregistered person occupies the same position as the registered (see above, pp. 58-65). But amongst unregistered persons there may be degrees of liability for negligence. Hence, an act or omission by an unregistered person who is skilful may be punished more lightly or severely, according to the circumstances of the case, than the similar act of an utterly unskilled person. The mere fact that a person without pretensions to knowledge undertook a cure would be in most cases considered gross negligence in his duty to the other person ; while at times the rule laid down as to negligence (pp. 58-61) would apply, and the unskilled and unregistered person who gave himself out as such would be less severely dealt with than the skilled unregistered person, *i.e.*, a person qualified to display greater skill.

APPENDIX—TABLE A.

TABLE OF PRESIDENT, MEMBERS, AND OFFICERS
OF THE GENERAL MEDICAL COUNCIL.

	ELECTING AUTHORITY OR BODY.	MEMBER.	EXPIRATION OF TERM OF OFFICE.
England.	The Crown	Richard Quain, M.D.	Nov., 1893
	„ „	Sir John Simon, K.C.B.	May, 1891
	„ „	Thomas P. Teale, M.B.	„ „
	Royal College of Physicians, Lond.	Sir D. Duckworth, M.D.	„ „
	Royal College of Surgeons, Eng.	John Marshall, F.R.C.S., Presi- dent	June, 1891
	Society of Apothe- caries, Lond.	R. B. Carter	Feb., 1890
	University of Ox- ford	William Selby Church, M.D.	Feb., 1892
	University of Cam- bridge	Donald MacAlister, M.D.	Nov., 1889
	University of Lon- don	Samuel Wilks, M.D.	Oct., 1889
	University of Dur- ham	George Y. Heath, M.D.	Dec., 1892
	Victoria University, Manchester	William M. Banks, M.D.	Nov., 1891
	Registered Medical Practitioners	C. Galen Wheel- house, M.D.	„ „
	„ „ „	Sir B. W. Foster	„ „
	„ „ „	James G. Glover, M.D.	„ „

	ELECTING AUTHORITY OR BODY.	MEMBER.	EXPIRATION OF TERM OF OFFICE.
Scotland.	The Crown	Sir G. H. B. McLeod, M.D.	Sept., 1892
	Royal College of Physicians, Edin- burgh	John B. Tuke, M.D.	May, 1892
	Royal College of Surgeons	Patrick H. Watson, M.D.	June, 1891
	Faculty of Physi- cians and Sur- geons of Glasgow	Hector C. Cameron, M.D.	April, 1893
	University of Edin- burgh	Sir William Turner, M.B.	Dec., 1891
	University of Glas- gow	William Leishman, M.D.	„ „
	University of Aber- deen	John Struthers, M.D.	„ „
	University of St. Andrew's	James P. Pettigrew, M.D.	Jan., 1892
	Registered Medical Practitioners	William Bruce, M.D.	Nov., 1891
Ireland.	The Crown	William Moore, M.D.	Jan., 1892
	King's and Queen's College	Lombe Atthill, M.D.	Oct., 1892
	Royal College of Surgeons	Rawdon Macnamara	Feb., 1890
	Apothecaries' Hall	Thomas Collins	Aug., 1892
	University of Dub- lin	Rev. S. Haughton, M.D.	Oct., 1893
	Royal University	Sir John Banks, K.C.B.	Aug., 1893
	Registered Medical Practitioners	George H. Kidd, M.D.	Nov., 1891

TREASURERS.

Richard Quain, M.D., and Sir D. Duckworth, M.D.
REGISTRAR AND BRANCH REGISTRAR, ENGLAND.

W. J. Clarke Miller, B.A., Medical Council Office,
299, Oxford Street, London.

BRANCH REGISTRAR, SCOTLAND.

James Robertson, 1, George Square, Edinburgh.

BRANCH REGISTRAR, IRELAND.

Robert Lynn Heard, M.D., 35, Dawson Street, Dublin.

APPENDIX—TABLE B.

FOREIGN AND COLONIAL DEGREES WHICH MAY BE *ADDED* TO THE TITLES OF AN ORDINARY (*I.E.*, NOT FOREIGN OR COLONIAL) REGISTERED MEDICAL PRACTITIONER'S REGISTRATION, IF OBTAINED BY EXAMINATION (PROVED TO THE SATISFACTION OF THE GENERAL COUNCIL), BEFORE 25 JUNE, 1886.

Doctor of Medicine (M.D.) of (1) the following universities, viz., Bâle, Berlin, Brussels, Erlangen, Freiling, Giessen, Heidelberg, Malta, Marburg, Paris, Pisa, Strasburg, Wurzburg, Zurich, Buffalo (U.S.), Harvard (U.S.), New York (U.S.), City of New York (U.S.), Vermont (U.S.); *or* (2) any of the following medical colleges: Bellevue (New York, U.S.), Jefferson (Pennsylvania, U.S.), Miami (Cincinnati, U.S.).

APPENDIX—TABLE C.

TABLE OF FEES PAYABLE TO 'MEDICAL MEN' *
AS WITNESSES.

COURT.	AMOUNT OF FEE.	TRAVELLING EXPENSES.
House of Lords	Physicians, medical graduates, and surgeons, 2 guineas per diem ; also for a non-resident, hotel expenses of 1 guinea per diem	Reasonable expenses actually paid to and from the court
	Apothecaries, dentists, and chemists (pharmaceutical or otherwise), 1 to 2 guineas per diem and hotel expenses as above	„ „
Appeal, Session (Scotland), Chancery and Queen's Bench Divisions, High Court of Justice (England), Supreme (Ireland), Commissary or Judiciary (Scotland), or Bankruptcy	If resident in town where trial held, 1 guinea per diem	„ „
	If resident at a distance (<i>i.e.</i> , medical man unable to return at night), 2 guineas to 3 guineas per diem, inclusive of hotel expenses	„ „

* In this list the fees are, with one exception, those of 'medical men.' In some courts 'chemists' are not, in others they are, treated as on an equality with medical men in this respect. As dentists are doubtless entitled to be considered 'professional men,' for this purpose, chemists who are also dentists would be entitled to maximum fees ; but in other cases must be prepared to accept the lower fees.

COURT.	AMOUNT OF FEE.	TRAVELLING EXPENSES.
Probate Division, High Court, England, Probate, Admiralty or Divorce	1 guinea per diem ; but if resident more than five miles from General Post Office, 2 to 3 guineas per diem, inclusive of hotel expenses	Reasonable expenses actually paid to and from the court
Assize or Circuit, General and Quarter Sessions, Sheriff's, (Scotland), Civil Bill and County (Ireland).	1 guinea per diem, unless exceptional circumstances ; then 2 guineas	3d. per mile each way
Mayor's, London	2s. per night away from home	
	10s. 6d. to 1 guinea per diem, according to length of day's attendance at court	Reasonable expenses actually paid to and from the court
City of London or County (England)	15s. to £1, as in the last case	Ditto, not exceeding 6d. per mile one way
Magistrates' Courts not included above	If resident within two miles, 10s. 6d. per diem ; if without, 1 guinea per diem	3d. per mile each way
Coroner's	1 guinea per diem, inclusive of hotel expenses	Reasonable expenses actually paid to and from the court

APPENDIX—TABLE D.

TABLE OF REGISTRABLE DIPLOMAS IN SANITARY SCIENCE, PUBLIC HEALTH, OR STATE MEDICINE.

LICENSING BODY.	TITLE.
Royal College of Physicians, London, and Royal College of Surgeons, Edinburgh	Diploma in Public Health.
Royal College of Physicians, Edinburgh	Certificate in Public Health
Faculty of Physicians and Surgeons, Glasgow	Qualification in Public Health
King's and Queen's College of Physic, Ireland	Diploma in State Medicine
Royal College of Surgeons, Ireland	Diploma in Public Health
University of Oxford	Certificate in Public Health
University of Cambridge	Diploma in Public Health
University of London	Certificate in Public Health
University of Glasgow	Qualification in Public Health
University of Aberdeen	Diploma in Public Health
University of Durham	Licence in Sanitary Science
University of Edinburgh	Bachelor and Doctor of Science in Department of Public Health
University of Dublin	Diploma in State Medicine
Royal University, Ireland	Diploma in Sanitary Science

APPENDIX—FORM E.

MEDICAL REGISTRATION.

ORIGINAL QUALIFICATIONS.

PARTICULARS TO BE SUPPLIED BY APPLICANTS
FOR THE REGISTRATION OF **ORIGINAL**
QUALIFICATIONS UNDER THE *MEDICAL*
ACTS.

I request to be registered as a Medical Practitioner, under
the *Medical Acts*, by virtue of the following Qualifications,
whereof I hereby affirm that I am lawfully possessed :

DESCRIPTION OF QUALIFICA- TIONS.	DATE OF QUALIFICA- TIONS.

*Applicant's Name (in full)*_____

*Applicant's Address (in full)*_____

*Date of Application*_____

APPENDIX—FORM F.

MEDICAL REGISTRATION.

ADDITIONAL QUALIFICATIONS.

PARTICULARS TO BE SUPPLIED BY APPLICANTS
FOR THE REGISTRATION OF **ADDITIONAL
QUALIFICATIONS** UNDER THE *MEDICAL
ACTS*.

I request to have entered in the *Medical Register* the following Additional Qualifications, whereof I hereby affirm that I am lawfully possessed :

DESCRIPTION OF QUALIFICATIONS.	DATE OF QUALIFICATIONS.

Applicant's Name (in full) _____

Applicant's Address (in full) _____

Date of Application _____

APPENDIX—TABLE G.

COLONIES AND FOREIGN COUNTRIES WHOSE
DENTAL DIPLOMAS ARE RECOGNISED BY THE
GENERAL COUNCIL.

COLONY OR FOREIGN COUNTRY.	TITLE OR DIPLOMA.	ENGLISH EQUIVALENT.
United States : Michigan Harvard	D.D.S. D.M.D.	} L.D.S.

APPENDIX—FORM H.

DENTAL REGISTRATION.

ORIGINAL QUALIFICATIONS.

PARTICULARS TO BE SUPPLIED BY APPLICANTS
FOR THE REGISTRATION OF **ORIGINAL
QUALIFICATIONS** UNDER THE *DENTISTS
ACT*.

I request to be registered as a Dental Practitioner, under
Clause (A) of Section VI. of the *Dentists Act*, by virtue of the
following Qualifications, whereof I hereby affirm that I am
lawfully possessed :

DESCRIPTION OF QUALIFICA- TIONS.	DATE OF QUALIFICA- TIONS.

Applicant's Name (in full) _____

Applicant's Address (in full) _____

Date of Application _____

APPENDIX—FORM I.

DENTAL REGISTRATION.

ADDITIONAL QUALIFICATIONS.

PARTICULARS TO BE SUPPLIED BY APPLICANTS
FOR THE REGISTRATION OF **ADDITIONAL
QUALIFICATIONS** UNDER THE *DENTISTS ACT*
(1878).

I request to have entered in the *Dentists' Register* the following Additional Qualifications, whereof I hereby affirm that I am lawfully possessed :

DESCRIPTION OF QUALIFICATIONS.	DATE OF QUALIFICATIONS.

Applicant's Name (in full) _____

Applicant's Address (in full) _____

Date of Application _____

APPENDIX—FORM K.

LUNACY CERTIFICATE.

In the matter of¹ _____ of² _____
in the county of _____, an alleged lunatic.
I, the undersigned³ _____ do hereby
certify as follows :

1. I am a person registered under the Medical Act, 1858, and I am in the actual practice of the medical profession.

2. On the _____ day of _____, 18____, at⁴ _____ in the county of _____ [separately from any other practitioner],⁵ I personally examined the said _____ and came to the conclusion that he (or she) is a lunatic, an idiot, or a person of unsound mind, and a proper person to be taken charge of and detained under care and treatment.

3. I formed this conclusion on the following grounds, viz.,

(a) Facts indicating insanity observed by myself at the time of examination, viz.,⁶

(Set out at length.)

(b) Facts communicated by others, viz.,

(Set out at length with full names of informants, their addresses, and descriptions.)

[If an urgency certificate is required add here : I certify that it is expedient for the welfare of the said⁷ _____ that

¹ Names of patient.

² Full address.

³ Full names of practitioner.

⁴ Give exact address where examination took place.

⁵ Omit the words in brackets where only one certificate required.

⁶ If the same or other facts were observed previous to the examination the practitioner should set them out in a separate paragraph.

⁷ Or 'for the public safety,' as the case may be.

the said should be forthwith placed under care
and treatment. My reasons for this conclusion are as follows :

(Here set out reasons fully.)

[If the lunatic is to be received as a single patient in a house belonging to or kept by a medical practitioner under the order of a County Court Judge, magistrate or justice, add :

4. I certify that the said _____ is suffering from unsoundness of mind of a temporary character.^{1]}

5. The said _____ appeared to me to be [or not to be] in a fit condition of bodily health to be removed to an asylum, hospital, or licensed house.²

6. I give this certificate, having first read the Section of the Act of Parliament printed below.

Dated this day of , 18

(Signed)
of 3

*Extract from Section 23 of the Lunacy Acts Amendment Act,
1889.*

‘ Any person who makes a wilful mis-statement of any material fact in any medical or other certificate, or in any statement or report of bodily or mental condition under the Lunacy Acts, or under this Act, shall be guilty of a misdemeanour.’

¹ Or from decay of mind in old age, or is desirous of voluntarily submitting to care and treatment, as the case may be.

² Omit this clause in case of a private patient whose removal is not proposed.

³ Full postal address.

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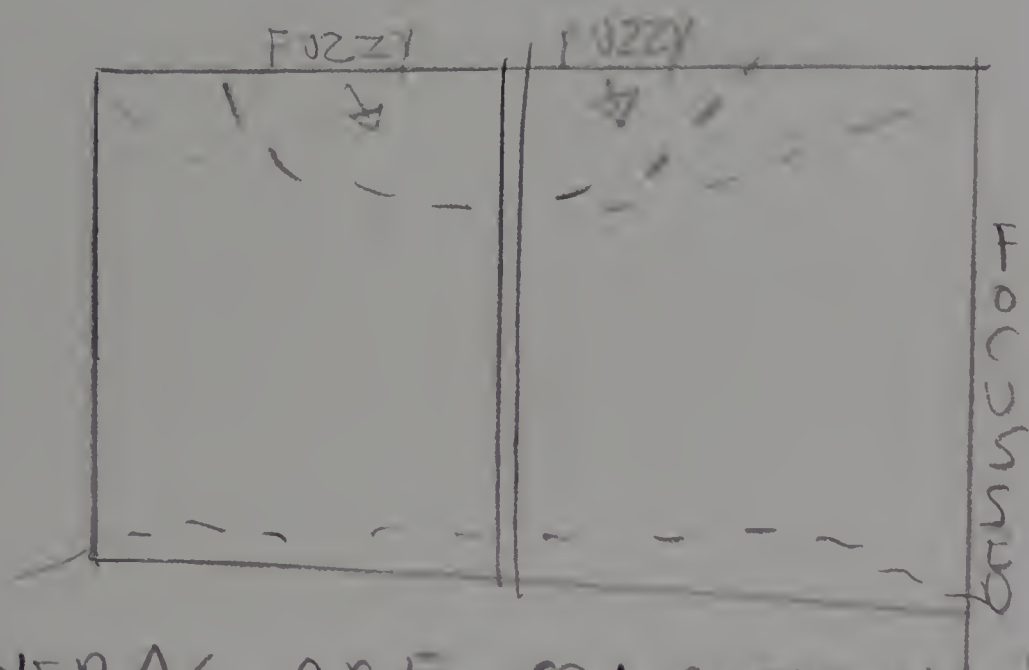
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